

Tancred, Christopher
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ESSAY

FOR A *M^r. Diney*

General Regulation

OF THE

LAW,

And the more Easy and Speedy

Advancement of JUSTICE.

Address'd to the RIGHT HONOURABLE

PETER Lord KING,

Lord High Chancellor of *Great Britain.*

Perus'd and Approv'd by several Eminent Persons.

By a Gentleman of the West Riding of the
County of York. - *Tancred Esq^r of*

Yorkshire

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SEP 30 1915

PETER LORD KING

Lord High Chancellor of Great Britain

Presented and Approved by Several Eminent Persons

by a Commission of the Privy Council of the
County of London

LONDON

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A N

ESSAY.



*To the Right Honourable PETER
Lord KING, Lord High Chan-
cellor of Great Britain.*

My LORD,



PERSWADE my self
that there is no Necessity
of making any Excuse for
this Address to your Lord-
ship, from this Assurance,
That every Attempt for the Advantage
of

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of the Nation, however imperfectly perform'd, will be receiv'd with the same Pleasure by you, that the Author of this small Essay, prompted with that View alone, had in its Composition.

Being entirely sensible, and in part from Experience, of the great Difficulties the Subject labours under from the excessive Delays and Expences in the Administration of Justice, and that from this Defect arises the principal Grievance of our Constitution; I have ever thought, that to be able to provide a Remedy in this Behalf, would be, in a very eminent Degree, to deserve well of the Publick, and to discharge a Debt which Nature has contracted, the Service of my Country.

From these Considerations I resolv'd to apply my Thoughts towards this good Work, which had made too deep an Impression on me to be defeated, in the Pursuit, by any Difficulties that arose in Opposition to its Success; tho' I was sensible, that in my present Situation

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tuation of Life, having no Share in the Legislature, I cou'd have, of my self, no Power to advance the Growth of what I had projected, but must have Recourse to some superior Hand, under whose Protection and Assistance I might, in some Measure, expect the desired Effect.

And, my Lord, I had no sooner determined to make this Publication, but, at the same Time, resolv'd to what Tribunal I shou'd apply for the Choice of a Patron, whose able and generous Influence might advance its Progress: And certainly this Address to your Lordship will not be esteem'd an Act of Inclination alone in the Author, but a Debt due of Right to your Person, since every Attempt for any Innovation or Amendment of the Law ought to pay that Tribute to your Lordship, as to receive the Sanction of your Judgment, who is so great an Ornament to the Profession.

And, my Lord, it is not the eminent Seat of Justice in which you are

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plac'd, but the universal Applause you have gain'd for a diligent and impartial Execution of that important Trust, that has oblig'd me to offer this small Essay to your Consideration; for the same conscientious Zeal that disposes you so effectually to administer Justice in your own Province, may, in a higher Degree of publick Service, induce you to exert your Abilities in removing those Barriers that impede the free and easy Decision of Property in general; since you have profound Knowledge in the Law to discern its Defects, Honour and Virtue to postpone all private Views to a national Advantage, and are in a powerful Situation of Life to promote so noble an Enterprize.

From these great Endowments, therefore, the World may, with Reason, expect an happy Event; and that whatever is defective either in the fundamental or practical Part of the Profession of which you are so entire a Master, may, by your Lordship's Influence, receive effectual Redress; and
when

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when 'tis consider'd how excellent the Frame of our Constitution is, how exactly adapted to the Dignity of human Life, how reasonable its Institution, and how in Order and Symetry the whole Structure appears to the strict Rules of Justice, it may with Regret be observ'd, that the Lustre of the whole Fabrick shou'd receive so great a Tarnish by the corrupt, dilatory, and expensive Proceedings of the Courts intended for the Advancement of Right.

And since the Favour of your Royal Master, procur'd doubtless by your distinguishing Merit, has advanc'd you to the eminent Station you now enjoy; and that your Lordship's Accession to the same was attended with the universal Joy and Approbation of your Fellow-Subjects, who unanimously agreed that the Determination of Property cou'd never be vested in safer Hands than your own, where the Distinction wou'd be clear and learned, and the Judgment sincere; you'll be

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pleas'd

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pleas'd to consider in what Manner you can, with the greatest Interest to your Country, acquit your self of this great Charge; and as a Male-Administration has of late blemish'd that Court where your Lordship now presides, which was instituted as a national Fountain of Justice, and whose Streams shou'd be preserv'd clear; whether it would not certainly be esteem'd the highest Degree of Service, not only to correct the Grievances and Abuses by an impartial Discharge in your own Time, but to cut out the Core that the Wound corrupts not again, in being the Author of procuring the Establishment of our Laws on such a Basis as may for ever derive down to Posterity the Execution of them, equal in Credit for Dispatch and Justice, to the Reasonableness of their fundamental Principles.

And if the Author of this Work, who acts only in an inferior Sphere of Life, and in that useful, but troublesome and fruitless Branch of the magisterial

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gisterial Function, the Preservation of the publick Peace, can conscientiously and with Regard only to the Interest of his Country, survey the Defects and Grievances in the Administration of Justice, and not content himself with his good Wishes alone, but has spent a considerable Period of Time, and undergone the Fatigue and Labour of the Brain, in forming a Plan for a Reformation; how much more shou'd it be incumbent upon your Lordship to exceed the subordinate Magistrate, in contributing to relieve your Country from Oppression in this Behalf, since you are situated in that eminent and advantageous Station, that you have Weight and Force to compleat and bring to Maturity whatever you shall esteem reasonable to promote?

And when the Difficulties are consider'd that must naturally attend the Success of this Undertaking, and the great Opposition that will be made against it by that heavy and oppressive Body that I propose chiefly to humble

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to the true Interest of their Country, it may probably be esteem'd, that my zealous Inclinations for publick Service have induc'd me to aim at what I am not able to accomplish: For to make so great an Innovation in the whole Fabrick of our Laws, as this Treatise prescribes, and to form the whole Structure upon so equal a Ballance, as to deserve the Approbation of that august legislative Power that is alone capable of affording an adequate Remedy, is a Work that may justly be thought superior for one Genius to attempt, and more so to compleat.

But before I cou'd entertain any Thoughts of being in a Capacity to form a Scheme for an Amendment of the Law, I endeavour'd to gain some Knowledge, not only in the fundamental Part of it, but in the Practice of the several supreme Courts of Judicature of the Kingdom, and can't help being of Opinion, that however famous the *British* Laws may be for an exact Symetry of Justice in their Institution,

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tution, yet, in numerous Particulars, they are both in Principle. and much more so in Practice, capable of great Reformation, and not so well adapted to the Occasions of the Age we now live in, as to that in which they were first form'd: And 'tis as absurd to think, that an ancient Structure of human Laws shou'd be as compleat as those of later Date, so much to be improv'd by long Experience, as that a House, contriv'd after the Old Fashion, can compare for Beauty and Convenience with the present Modern Architecture.

And if a free and easy Exercise of human Laws tends to the general Good of the Community, by enforcing Obedience to Government on the one hand, and thereby establishing the publick Peace; and on the other, procuring to each Party the full Enjoyment of private Property, it would certainly be the most distinguishing Mark of a good Patriot to promote an Expedient that wou'd so eminently brighten the
Con-

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Constitution: And, I conceive, long Experience has sufficiently evinc'd the Want of such a Regulation, and that our Method of administering Justice is not form'd upon so reasonable a Basis as might be contriv'd, since Ages pass away in the Determination of one Law Controversy, whole Patrimonies consum'd in the profuse Expences, and Subjects of all Conditions join in this discontented Harmony, that 'tis less Oppression to suffer Injuries, than to persevere in the Pursuit of Right thro' its difficult and endless Labyrinths.

This must doubtless be esteem'd not only a great Defect in the Constitution, but an Oppression to the Liberty and Property of the Subject, a Discouragement and Hindrance to all publick Commerce, as well as private Dealings, by the great Difficulties that attend the Performance of such Contracts as shall not be voluntarily comply'd with, and for the numerous other ill Consequences that must necessarily attend the dilatory Execution of Laws, highly deserving the
the

Regulation of the Law. 11

the mature Attention of that wise legislative Power that is only capable of affording an effectual Remedy: And if any other Motive, than that of a general national Good, cou'd be wanting to promote so great and glorious an Undertaking, the Reflexion of adding further Glory to the present happy Establishment, under which we live, shou'd make no small Impression, that a new *Magna Charta* may be form'd (or, at least, the old one largely improv'd) in the Reign of an indulgent Prince, whose Protestant Succession is the Life and Vigour of our Laws, and the only Support and Preservation of our Church and State.

And, certainly, if a publick Spirit is not remiss in the great and powerful Part of the Legislature, in forming and promoting so great and glorious an Enterprize, a more favourable Conjuncture cou'd never be embrac'd for bringing such a Design to a speedy and happy Period, than under this auspicious Government; For his sacred Majesty has, through

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through the whole Series of his Reign, given such signal Proofs of his being a tender Nurling Father of his People, so careful a Preserver of their Ecclesiastical and Civil Rights, so assiduous an Espouser of the Trade, Riches, and Prosperity of his Subjects, that no Increase of Liberty or Franchise for them could be with more Alacrity presented, than it would receive the finishing Stroke of his Royal Impression.

And, my Lord, 'tis to be hop'd that the pristine Virtue of our Ancestors that has, upon other Occasions, given so many signal Proofs of relieving their Country from Oppression, and of removing all those Barriers that contributed thereto, may now revive and exert it self in promoting this good Work, that nothing shall be suffer'd to stand in Competition with that which will so eminently tend to the Improvement of the Constitution in one of its most valuable Branches, and procure Tranquility to the Subject by an easy and speedy Determination of their Property, and, what this Author so earnestly

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neftly wifhes may attend, the Execution of this Undertaking, he has ftrictly purfued in its Inftitution; for, in forming this Scheme, he has had no Regard to the Decay of the Profeflion, no Scruple againft creating private Loffes and Inconveniencies, but has mov'd upon this reasonable and generous Bafis, as to concert every Branch for the Honour of the *British* Government, and the Eafe of the Subject in general,

Salus populi fuprema efto Lex.

And having thus examin'd and discern'd the Defects and Male-Administration of our Laws, I have endeavour'd to apply each Remedy propos'd to the Root of the Difefe, and reduce the whole Fabrick and Practice to fo reasonable a Foundation, as that the Suitor may not hereafter meet with that Oppreffion and hard Treatment, that has hitherto constantly attended the Purfuit of Right. And, as my Inclinations are ftrong for the general
Good

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Good of my Country, I have here exerted all the Force I can possibly be Master of in the Service of it ; for, as I have only the Power of Projection, but quite destitute of that of Execution, I can only, as I have done, humbly submit my Thoughts to the impartial Consideration of the Publick, (but as to that Part of it, the practical Professors, their Judgment will be over-balanc'd by Self-interest, and therefore this Author expects no Quarter or candid Interpretation from them,) I here address my self to your Lordship (who is the present *Hercules* of the Law, and has Interest and Force to perfect whatever you shall espouse) for your generous and powerful Assistance, in promoting what you may esteem reasonable in this Work, in which I have no other Motive than publick Service, or expect any other Recompence than that this Treatise, the Fruits of my Labour, may prove as a Turnpike to my Fellow-Subjects in every Respect, (except that of demanding

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manding Tribute for their Passage) to make the High-Road to Justice intelligible, smooth, and easy.

But, that I may not delay coming to the principal Subject-Matter of what I here treat of, by a too tedious Introduction, and that I may confine myself within some tolerable Brevity, (for shou'd I enumerate all the several Particulars that require Redress they wou'd appear almost infinite, and swell this Volume beyond the ordinary Compass of an Essay,) the main Basis on which I shall build, in order to bring about the Reformation I propose, the Want of which is, in my humble Opinion, the greatest Deformity and Grievance in the Structure of our Constitution, may be chiefly deduc'd from these capital Articles following, *viz.*

I. *From*

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I. *From requiring special Bail to be given in Civil Cases.*

II. *From not abolishing that destructive Practice of Outlawries in Civil Cases.*

III. *From the intricate Method of pleading at Common Law, and the Want of one general peremptory Plea in all kind of Actions.*

IV. *From the great Delays and Expences in obtaining a final Judgment at Law, by allowing so many Appeals by Writ of Error; from the respective Common Law Courts; and from the Want of suppressing the*

Regulation of the Law. 17
the Practice of bringing Writs
of Error to remove such Suits,
which might be as effectually
done by no such expensive
Method.

V. *From not advancing the Qua-*
lity, and better regulating the
Return of Jurors, who are the
Judges of the Lives and Pro-
perty of the Commons of the
Kingdom.

VI. *From not limiting a reaso-*
nable Time, in which all Issues
join'd at Law shall be brought
to Trial by the respective
Plaintiffs, (and, in Default
thereof, not by Defendant by
Proviso,) on strict Penalties.

C

VII.

VII. From not trying all Proceedings in the several Courts of the Kingdom in a methodical Manner.

VIII. From not inflicting a greater Penalty on Persons prosecuting vexatious Suits for Trespases, Slander, and Batteries, than the Law has at present provided.

IX. From the great Delays frequently occasion'd by allowing Plaintiffs to nonsuit themselves, and thereby having Liberty to bring such Issues again to Trial, after full Evidence on the same.

X. From not confining Trials at the Bar of any of the superior Courts (which are such additional Expences to Suitors, as well as Trouble to Jurors) to Causes of higher Consequence than they are, at present, extended to.

XI. From not inflicting a greater Penalty on Persons admitted to sue in Forma Pauperis, (who too frequently abuse the Indulgence the Law has allow'd them,) when their Suits shall be adjudg'd frivolous and vexatious.

XII. From not abolishing the several obsolete and intricate
C 2 Writs

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Writs given in real or possessory Actions, and reducing them all to that of Ejectment.

XIII. *From not inflicting a higher Penalty on the Crime of wilful Perjury, on which the Lives and Properties of the Subjects so much depend.*

XIV. *From not inflicting a higher Penalty on that heinous Offence of Barretry, so pernicious to the Ease and Tranquility of the Subject.*

XV. *From the excessive Jurisdiction of the Courts of Equity, (the present Gulph for the Determination of all Disputes,) by staying Suits commenc'd at
Law*

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Law by Injunction, and confining to those Courts only the Cognizance of deciding Property in several Branches, which would, with greater Ease and Speed to the Subject, be determin'd in the Courts of Law.

XVI. *From not allowing Debts due upon Bond, whether against the Obliger, or his proper Representative, to be recover'd only by Action at common Law.*

XVII. *From not allowing Portions and Legacies, whether charg'd upon real or personal Estates, to be recover'd only by Action at common Law.*

XVIII. From the great Expenses accruing to the Subject, by the voluminous Method of drawing up the interlocutory Orders and final Decrees of the Courts of Equity; and from the Want of shortening the interlocutory Proceedings, and better regulating the Practice of those Courts in several Particulars.

XIX. From the great Abuses committed by Executors and Testamentary Guardians, by not being oblig'd to give Security for their faithfully answering the Assets, and yearly accounting for the Profits of the Estates intrusted with them,

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them, in like Manner as an
Administrator has always done
to the Ordinary.

XX. From the Want of suppress-
sing the many inferior Courts
of the Kingdom, prov'd
so infamous and corrupt by
their Proceedings, and appro-
priating the Decision of all
Disputes under a reasonable
Value, to one convenient Court
of Judicature in the County
where they arise, where there
would be an easy Expence,
and a quick Circuit of Justice.

XXI. From not establishing Year-
ly Salaries to be paid by the
Crown; not only upon all
Judges, but all other Officers
C 4 concern'd

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concern'd in the Administra-
tion and Execution of Justice
and restraining them from re-
ceiving any other Fee or Profit
whatever.*

XXII. *From the great Scandal
to the Constitution in suffering
such a Number of free-born Sub-
jects, insolvent Debtors, to re-
main in Prison, and there die
or languish for want of the
common Ingredients of Life.*

XXIII. *From the expensive and
voluminous Method of convey-
ancing.*

XXIV. *From the expensive
practice of levying Fines, the
Use of which might be more
effectually*

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effectually answer'd, by no such
oppressive Method to the Sub-
ject.

XXV. From the ridiculous Cus-
tom of suffering Common Reco-
veries, which the Usage of no
other Country can warrant,
or any Reason support.

XXVI. From not allowing Writs
of Habeas Corpus (which is
the brightest Article of Li-
berty in the British Constitu-
tion) to be the pure Gift of the
Crown, and made out to the
Subject without Fee or Re-
ward ; and from not abolish-
ing the Practice of suing out
Writs of Dedimus Potesta-
tum, to take Answers to Bills
filed

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filed in the Court of Equity, and to administer the respective Oaths to Sheriffs, Justices of the Peace, and other Officers; which might be as effectually perform'd by no such expensive Method.

XXVII. *From the Want of a General Register of the Kingdom, there to record all Securities, whatever, affecting any Lands and Hereditaments within the same, by which all prior Incumbrances might, at first view, appear, and consequently numerous Suits touching fraudulent and defective Titles be prevented.*

XXVIII.

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XXVIII. From the numerous and superfluous Offices belonging to the Courts of Common Law and Equity, which occasion Confusion in Business by passing through so many various Channels, as well as Delay and Expences.

XXIX. From not lessening and ascertaining the Fees of all the Practicers of the Law, and limiting the Number, and better regulating the Practice of those upright Dealers, and worthy Patriots, call'd Attorneys at Law.

XXX. From not enumerating the Particulars and ascertaining the Expences that every Suit-
or

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or shall not exceed in passing
thorough and obtaining a final
Judgment and Execution in
each Court of Judicature in
the Kingdom.*

Having thus drawn the Out-Lines of the Fabrick I purpose to erect, (from which, without being too sanguine of my own Performances, a most illustrious Pile may be form'd for the general Ease and Good of the Subject,) I shall, in the next Place, proceed to compleat the Plan ; and to inforce and demonstrate the Reasonableness of each Innovation I purpose to introduce, in competition with that Form of Law and Practice already establish'd. But before I can entertain any Thoughts, that this Treatise can be of that real Use that all sincere Lovers of their Country shou'd wish, I must premise this as a necessary Preliminary towards its meeting with that favourable Reception that
the

Regulation of the Law. 29

the Importance of the Subject may justly require, That those, under whose Consideration this Essay shall come, must cancel all Thoughts of Self-Interest, and not censure the Work by the private Losses and Inconveniences it may occasion, but impartially to consider whether, or how far, it effectually answers the sole End for which it was calculated, the Advancement of a National Good.

But we find, by Experience, that the Principle of Self-Denial is now almost grown quit obsolete ; for when any good Disposition appears, either by Natural Instinct or Inspiration, to advance what may contribute to the greater Liberty and Repose of the People, such good Designs are too often defeated for no other Reasons, than that such an Innovation wou'd diminish the Profits of my Profession, says one ; or pinch the Yearly Revenue of my Office, says a second ; or disoblige such a powerful Person, from whom I have Expectations of Advantage, says a Third ! And by these,
and

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and such like ignoble and ungenerous Arguments, are diverted the Prosecution of such Measures, as wou'd render each Branch of the Constitution compleat, that may now remain defective.

Now, as Regularity and Order, in all the Intercourses of human Life, tend to the greater Dispatch of Business and better Execution of any Design, I shall observe this Method in the following Treatise, *viz.*

1. I shall make each Capital Article beforelaid down my Text, and divide the Work into as many Chapters or Sections as shall correspond to that Number.

2. I shall prescribe in what manner each Article or Proposition is to be effected.

3. I shall muster up all the Force and Argument I am Master of, in Support and Vindication of what I offer.

I shall, therefore, proceed to the making out my first Proportion, which is, *viz.*

SECT.

S E C T. I.

*From requiring Special Bail to
be given in Civil Cases.*

Proposition. **I**T is propos'd, that the Body of the Defendant shall not be arrested or imprison'd upon any civil original Process whatever, but, instead thereof, a Copy of the Writ, (in which the Declaration of the Plaintiff shall be incerted,) shall be serv'd personally upon the Defendant, or left at his usual Place of Abode; and if the Defendant shall not appear before the Day of the Return of the Process, or four Days after, (upon an Affidavit made and filed of such Personal Service, or leaving the same at his Abode,) the Plaintiff may enter a Common Appearance for the Defendant; and if no Plea shall be enter'd before the last Day of the Term next to that in which the first Process was returnable, the Plaintiff shall not
sign

sign Judgment, but enter also the Plea of the General Issue for the Defendant, make up the Record, and convey the same to the proper Court of Judicature to Trial; and after Verdict given, but not before, shall proceed to Execution against the Person, Lands, or Effects of the Defendant by any Judicial Process, as formerly.

Reason. Now, in Support of this first Article I humbly conceive much less Argument may be made use of, when 'tis asserted, that this Practice is inconsistent with the just Rudiments and Principles of the Civil Law, (by which, or with small Deviation from it, all the Kingdoms and States of the known World are at this Day govern'd,) as well as the antient common Law of *England*. For both these excellent Laws have, with great Justice, defin'd that the Liberry of a Subject ought not be restrain'd, or his Person in Jeopardy, till the Dispute in Question has had a Determination before proper Judges, and thereby receiv'd a Sanction of the
Justice

Regulation of the Law. 33

Justice of the Demand. And, I cannot but greatly applaud the Sagacity of both these excellent Laws I have quoted for their wise Institution, in providing what is so highly agreeable to the strict Rules of Justice, since, I apprehend, there cannot be the least Reason assign'd why a Person (after he has contracted a Debt, either by accommodating his Friend, to gratify his Necessities, or, if in a trading Way, to oblige himself by vending a good Commodity at an exorbitant Profit, or disposing off a bad one, that none of good Substance, and able to advance ready Money, can be prevail'd on to engage in) shou'd have Power to compel his Creditor, on the Penalty of the Loss of his Liberty, to find Pledge for the Payment of what he voluntarily trusted to his own single Security. Now, as this Introduction of Special Bail into this Nation, contrary, as I said before, to the old establish'd Common Law, is highly dangerous to the Liberty and Repose of the Subject,

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so

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to the Remedy provided as a Recompence against the Abuse of it, is no way adequate to the Damages and Losses that the Use of it may create: For, I suppose, that any one is debarr'd of Liberty, for want of being able to procure Bail, in a Case where there shall not be found to be the least just Colour or Pretence of Action, (as innumerable Instances of this sort may be cited,) then, as a Satisfaction for such a superlative Piece of Injustice, the Law has allotted an Action of false Imprisonment, to recover Damages against the Offender, to which no Special Bail can be requir'd: Then, if this is a true Definition of the Affair, the Conclusion must stand thus, That whilst a Man carries on a groundless Prosecution to gratify Resentment, Revenge, or other unjust Purposes, he shall have Power to require Bail; but, when a Reprizal is made for such a certain Piece of Injustice, none shall be allow'd. This, I hope without the Assistance of Algebra, may be prov'd
contradictory

contradictory to Reason, and erroneous to Truth. I know very well I shall, in defending this propos'd Innovation, be attack'd with this Objection, That the Abolition of Special Bail will create a general Diffidence in the Nation, and consequently cramp Trade and Credit. To this I must reply, That I have always esteem'd too much Credit as destructive, particularly as to private Capacities, as too little; for, in the first Instance, by Excess of Credit a Man may contract for more than he can perform, the certain Consequence of which must be Loss to those with whom he has dealt; but in the other, if no more Credit is given than there is a solid Foundation to answer, no Damage can possibly ensue. I could urge much more in Defence of this Proposition, but shall content myself to add only this, That I can discern no Reason why this should be esteem'd a necessary Fundamental in the King-

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doms of *England* and *Ireland*, where *Liberty* is generally reported to be indulg'd, and in no other Part of the known *World* besides, and yet *Commerce* as regularly carried on, and as plentifully abounds; which *Observation*, with my *Wishes* that it may meet with a happy *Event*, shall conclude this first *Section*.



S E C T. II.

From not abolishing that destructive Practice of Outlawries in Civil Cases.

IT is propos'd that all Writs of *Exigent* and *Capias Utlegatum* shall be suppress'd, (as they must of course be,

Regulation of the Law. 37

be, if the foregoing Article is comply'd with; for if no Special Bail be allow'd, no Writ of *Capias* will issue, upon which Writs of *Exigent* and *Capias Utlegatum* are grounded,) and that instead of the Practice of clandestine Outlawries, equally dangerous to the Person, as well as Property of the Subject, every Plaintiff in any Action at Common Law shall, if the Defendant cannot personally be serv'd with any Process, leave a Copy of the original Writ at his usual and most notorious Place of Abode, (after Affidavit made, and filed in the proper Court,) enter the Appearance, and afterwards the Plea of the General Issue, for such Defendant as prescrib'd in the foregoing Section, make up the Record, convey the same down to the proper Court of Judicature to Tryal, and after Verdict given, and not before, proceed against the Person, Lands, or Effects

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of the Defendant in such Manner; and as fully as now by Law enabled to do after an Outlawry obtain'd. But, if it was impartially consider'd what ill Consequences attend this Practice, and the heavy Penalties that are incident to it, no Time would be esteem'd short enough, or Labours too great in removing this great Barrier to the Liberty of the Subject. For tho' the original Institution of this Practice was only against those who absconded, and could not be personally serv'd with any Process to answer Justice; yet, the Use of it is such, that no Person in the most eminent Condition, or publick Negotiations of Life, can escape falling under the Penalty of a clandestine Outlawry. And if the corrupt Method of Proceeding in this Behalf be duly weigh'd, 'tis impossible it should otherwise happen; for tho' the Law has prescrib'd that no Outlawry shall be obtain'd till the

Defendant

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Defendant has been publickly proclaim'd upon the Writ of *Exigent* five several Court-Days in the County-Court; and if sued in a Country where he does not usually reside, Provision is made by an exprefs Statute, that he shall in that Case be proclaim'd twice in the County-Court, and once at the Quarter-Sessions of the Peace; so that the Law supposes and provides, that all this Publick Solemnity shall be made use of before a Subject is liable to so severe a Censure, yet, the only Solemnity practis'd, is, that the Sheriff suffers the Writ to lie in his Office, or the Attorney keeps it in his Pocket, till so many Court-Days are past; upon which the Sheriff returns the Party outlaw'd upon the *Exigent*, which compleats the whole Affair. Now, whether the heavy Penalties of Imprisonment without Bail; Incapacity to commence any Suit in any Court of Law or Equity till Reversal, which will take up some

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Time in doing ; to have Effects seiz'd, or Lands extended at the Mercy and Discretion of a Plaintiff, and left without Remedy for Relief, except by Bill in Equity, (which is found to be only an uncomfortable Cordial in Time of Sickness or Distress ;) ought, with Regard to Justice and Liberty, be impos'd on a free-born Subject ; or that the Method here prescrib'd shall, as it certainly ought, have the Preference, must be left to the impartial Consideration of those who are in a Capacity to promote, as well as judge of this intended Reformation ; which must conclude this second Section.



SECT.

~~REGULATION OF THE LAW~~

S E C T. III.

*From the intricate Method of
pleading at Common Law,
and the Want of one General
Peremptory Plea in all kind
of Actions.*

IT is propos'd, that all special Pleadings at Law shall be suppressed, and the General Issue pleaded, and the special Matter given in Evidence in all kind of Actions whatever; and that Issues at Law may be as short and concise as possible, the unnecessary Addition of the *Jurata*, hitherto incerted in all Records of *Nisi Prius*, be for the future omitted. Now, that the only Use that ever I cou'd hear alledg'd for special Plead-

ing,

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ing, (in reducing the Matter at Issue to one single Question, and thereby enabling the Parties to make a proper Defence, and not be surpriz'd by any special Matter to be offer'd) may be as effectually supply'd by no such expensive and delatory Method, I propose either of the two Expedients following, *viz.*

1. That each Party shall give to the other Notice in Writing, a sufficient Number of Days before the Tryal of any Issue at Law, of any special Matter that shall be offer'd at the same.

2. Or thus, which I esteem more effectual, That each Party shall deliver to the other, as aforesaid, a true Copy of the Briefs they shall respectively give to their Counsel, and nothing to be offer'd in Evidence at the Tryal, but what shall be contain'd in such Briefs.

I doubt not but the Inconveniencies of special Pleadings have been, and are daily found, by the great Delay and Hindrance they occasion in the Administration

Regulation of the Law. 43

Administration of Justice ; and if a Method cou'd be prescrib'd, whereby Right to the Injur'd might be obtain'd upon the most easy Terms to the Subject, (which shou'd be the only Point in View in all Courts of Judicature,) that ought to be closely pursued, without having any Regard to whose Purse or Person it may disoblige. And they are so far from answering the End and Intent for which 'tis insinuated they are necessary to be upheld, which is, to ascertain the Matter in Dispute, and set the same in the most correct Light to the Court, in order to receive a true Judgment, that they are frequently the only Causes of diverting it from ever receiving any Judgment at all. For 'tis most notorious, in several Instances of the highest Consequence, where the Matter in Difference cry'd aloud for speedy Justice, that by Cavils and Exceptions taken on each side to Pleadings, the Merit of the Dispute in question has never once come upon the
the

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the Stage, but at last gone off, by these Tricks and Law-Craft, without any Determination. And I shou'd have thought that, as in Ejectment, (which is of the highest Consequence and Importance, and the most made use of any other real Action that our Law allows of for the Recovery of Lands,) no other Plea than that of the General Issue, is, and has been in all Times, practised, the same might serve as a President to direct all others of inferiour Nature to pursue that establish'd Method: For 'tis a Maxim, that the higher Species shall include the lesser, but never the reverse. But, I suppose, 'twill be objected, in Opposition to an entire Subversion of special Pleadings in all kind of Actions, that one may proceed with great Safety to Tryal, (without the least Danger of being Surpriz'd by any conceal'd Matter to be given in Evidence, that the adverse Party shall not be prepar'd to make a Defence against,) with the Plea of the General Issue, in a real Action, for the
Recovery

Regulation of the Law. 45

Recovery of a Number of Manors, but not in those personal, or others. Then, I think, the Inference must stand thus, That if a whole Continent of Land be to be recover'd, in that Case special Pleadings are of no Use; but, if an Action be brought for a Bunch of Turnips that were produc'd from the most minute Part of it, then they are entirely servicable. How this Conclusion can be demonstrated by an algebraical Problem to correspond exactly with Reason and the Truth of Numbers, I must leave to the Decision of the Learned, and, in the interim, will conclude this Third Section.

SECT.



S E C T. IV.

From the great Delays and Expences in obtaining a final Judgment at Law, by allowing so many Appeals, by Writ of Error, from the respective Common-Law Courts, and from the Want of suppressing the Practice of bringing Writs of Error to remove such Suits; which might be as effectually done by no such Expensive Method.

IT is propos'd, that to prevent so many Appeals from the respective Superior Common-Law Courts, by which Justice is retarded, the same shall lie from each of them directly to the House of Peers. And that the
expensive

Regulation of the Law. 47

expensive Method of bringing Writs of Error shall be abolished, and, instead thereof, that the Plaintiff lodging, by Leave of that noble House, the Issue try'd (otherwise call'd the *Postea*) with the Clerk of the Parliament, within such Time after Judgment obtain'd in the Courts below, as shall be agreeable to the Rules of the House, and obtaining an Order to summons the Defendant to attend Judgment there, shall be as effectual an Appeal or Removal of such Record, to all Intents and Purposes, as when brought thither by a Writ of Error.

I have always been of Opinion, that the Allowance of so many Appeals at Law is, for the most part, very oppressive to the Subject, and a great Hinderance to the Execution of Justice: I doubt not but the Intent of the first Institution was good, and that the same was calculated with a View of having the Determination of Property more correctly administer'd by so many several Disgestions, which might be rationally

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tionally suppos'd to be a good Means for the better Discovery of the Truth. But whether the Innovation I propose to introduce may not, in a much shorter Period of Time, and at a much less Expence, as effectually contribute to the Advancement of Justice as the old prolix and round-about Method, will be the Matter in debate. I know very well that the Writ of Error is the Old Common-Law Appeal, supposing some Defect or Error, not in the Nicety of Pleadings, but in the more essential Part, the Solidity and Firmness of the Judgment; and where that shall be founded upon Principles inconsistent with Reason and good Conscience, it may be justly esteem'd a notorious Error in the Judgment. I am far, both in this and all other Cases, from destroying Appeals; they certainly tend to the Administration of Justice, and are absolutely necessary to the keeping the subordinate Courts in good Decorum, and within due Bounds, lest their Proceeding shou'd
receive

Regulation of the Law. 49

receive the Censure of those Powers that are enabled to controul them ; but, on the other hand, I shall ever oppose, that the Subject shall be oblig'd to go a tedious and indirect Road in the Pursuit of Right, when as safe and more convenient Passage may be obtain'd. Therefore, I can't esteem it a reasonable Practice, tho' an old Fundamental, that the Subject shou'd be constrain'd to travel in the Pursuit of Justice from the Common Pleas to King's Bench, thence to the Exchequer-Chamber, and thence to the Dernier Resort, when he may, at one Leap, arrive at the last desir'd Haven without those tedious, expensive, and fatiguing Marches ; nor can I conceive that there is a greater Assurance or fairer Prospect of obtaining a better Determination or more correct Judgment, by receiving the separate Sentiments of the Judges in their respective Courts, than there wou'd be, at once, from the *August* Assembly of the Peers, assisted with that Load of

E Learning

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Learning on the Wool-Sacks. I confess, indeed, that the Method propos'd may not only impair the Practice of the Law-driving Party, but take off a considerable Branch of the Profits of the presiding Judges of the three superior Courts of Law; which, perhaps, may be the only Reasons that can be assign'd why this delatory Way of Proceeding has subsisted so long, or may still continue: But was I to entertain any such sordid Reflexions, I shou'd esteem my self entirely incapable to write for Publick Service, and shou'd also depart from the Resolutions I laid down at the Beginning of this Essay, of suffering no other Consideration to come in Competition with that which wou'd contribute to the Advantage and Repose of my Country in general; which, with my Wishes that the great Power, who is capable of affording Redress of every Defect or Oppression, may be mov'd to act in this, and all other Articles that require Amendment, on the same
generous

Regulation of the Law. 51
generous Basis, shall conclude this
fourth Section.



S E C T. V.

*From not advancing the Quality,
and better regulating the Re-
turn of Jurors, who are the
Judges of the Lives and Pro-
perty of the Commons of the
Kingdom.*

IT is propos'd, that Writs of *Venire
Facias* and *Habeas Corpora Furato-
rum*, for summoning Jurors to try
Issues at Law, shall be suppress'd; and
that instead thereof the respective
Sheriffs of *South Britain* shall summon
one Pannel of Jurors of fifty or one
hundred Pounds a Year, (or one or
two thousand Pounds Personal Estate,
if within Precinct of any City,) con-
taining

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taining such a Number as shall be esteem'd to be an equal Proportion to the Extent of each County; and that the Judges trying Issues at Law by Jury, shall cause to be hung up in Court where they sit a Bag, containing as many Balls of Ivory of equal size, as shall answer in Number to the Pannel of Jurors summon'd by the Sheriff to serve at every Assizes of each County, or for any Tryal at the Bar of any of the superior Courts, the Pannel and Balls to be both regularly number'd; and, upon bringing on every Issue to Tryal, the Court shall cause to be drawn out Balls to the Number of Twelve, and those Jurors, whose Numbers on the Pannel shall correspond with those upon the Balls drawn out, shall be the Jury to try such Issue.

As Jurors by the Establish'd Laws of this Kingdom have so great Trust repos'd in them, as to be Judges of the Lives and Properties of the Subjects of it; no Expedient, I suppose, will meet
with

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with any Opposition, or Precautions esteem'd too much, in providing any Measures to prevent Corruption in any kind, that may be a Means to occasion a Failure of Justice. I doubt not but Experience has fully prov'd in many Instances, that the old Institution, both as to the Qualification and Return of Jurors, is capable of a better Regulation; and that the Method here propos'd, if candidly consider'd, will both alleviate, the Subject from unnecessary Expences, and conduce more effectually to the impartial Determination of Life and Property. For, first, as to their Qualification, which is now confin'd, to ten Pounds a Year in all Cases, except where a special Jury is directed, I apprehend there may be these too Objections rais'd, *viz.* Impartiality in proceeding, and Ability in judging; for as such are generally under the Influence and Direction of their superior Neighbours, may, if themselves or Friends are interested in Matters committed to their Adjudi-

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cation, be brought into indirect Measures by them, either by Menaces or Promises of Gratification, which Men of that low Degree and Substance may be too often liable to. But, if no Exception cou'd be made against their Administration, in Point of Justice, yet, surely, their Abilities may be liable to an Impeachment, for the Lowness of their Birth and Education, being, for the most Part, quite destitute of all sort of Literature, and only bred up to the servile but useful Labour of the Plough, can possibly procure them no Share of Knowledge equal to what may be justly expected, and absolutely necessary, in those to whom is committed the Execution of such important Charges, as the Decision of Matters Civil and Criminal. Now, as Tryals by Juries are a distinguishing Mark of our Freedom, that our Lives and Properties shall be decided by twelve of our Fellow-Subjects, sworn to make a just Deliverance in both, with a learn-

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ed President to direct in Point of Law, when Occasion shall require, so the utmost Caution ought to be taken in preserving this Branch of the Constitution, so material to the Liberty of the Subject, free from Blemish and Imputation ; but if by the Ignorance and Unfitness of Juries to determine Property, occasion'd by the low Degree and Quality that the Law now allows them to be of, the Judge is oblig'd to direct how the Verdict shall be found in Point of Fact. By these Means, instead of having all that is dear and valuable to the Subject try'd by a Jury of their Neighbours upon Oath, the Judge becomes sole Arbiter of Fact as well as Law, and thereby encroaches upon a Part no way appertaining to his Office. Now, as to the antient Method of returning Jurors, which is till practis'd to this Day, I conceive it contributes to the creating of needless Expences, as well as to the introducing of Corruption ; for as to the first Instance in all Issues join'd at

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Law, the Plaintiffs are oblig'd to be at the Charges of suing out the two Writs of *Venire Facias* and *Habeas Corpora Juratorum*; the first for the Sheriff to summon the Jurors, and the latter to have them present at the Tryal; which wou'd be all sav'd, and Justice more effectually administer'd, if only one Pannel was to serve in the Manner before prescrib'd. I doubt not but the original Institution of the Law in this behalf was good, and that the Intent of having Suits determin'd by a Jury *de Vicinito* was done, with this Supposition, That those residing near to the Place where the Controversy arose, might be best appriz'd of the Merits of the Fact, and thereby the most able to determine the same according to Right and Justice. But tho' this Fundamental may appear well in Theory, yet 'tis by Expence found the Reverse in Practice; for as this Way of proceeding gives the Parties early Notice of the Jurors who are to try the Issue in Dispute, so they and their Agents

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Agents have an Opportunity, previous to the Tryal, to tamper with and bribe them ; infomuch, that, at an Affizes, 'tis as usual to hear the Parties and their Attorneys instructing the Common Juries and Witnesses with the Matters that are to come before them, (and almost in as plain Language,) as the Prompters use behind the Scenes to the Actors in the Play-House. Now, whether the Innovation here propos'd of advancing the Quality of Jurors, which may be a Means to guard them against engaging in low indirect Practices, and chusing them in the Manner of a Ballot, by which no Party can possibly know his Jury till the Issues comes into Court for tryal, (and then too late to afford any Opportunity for the Parties to make the ill Impressions already repeated) will answer the Benefit intended to the Subject, must be referr'd to better Judgment ; which shall conclude this fifth Section.

SECT.



S E C T. VI.

From not limiting a reasonable Time, in which all Issues joined at Law shall be brought to Tryal by the respective Plaintiffs, (and, in Default thereof, not by Defendants by Proviso,) on strict Penalties.

IT is propos'd, that all Issues at Common Law, shall be join'd before the first Day of the Term, next after that in which their Original Writs shall be returnable; and all such Issues, if the Causes of Action arise within *London* or *Middlesex*, shall be try'd in the same Term, or Sitzings after; or, if in any other County, at the next Assizes there;
or,

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or, if a Tryal be allow'd at the Bar of any of the superior Courts, in the next Term after such Assizes, at which such Tryal had been: And, if such Issues are not brought to Tryal, by the respective Plaintiffs only, if in *London or Middlesex*, the second Term after Issue join'd; or, at the second Assizes, if in any other County; or, in the next Term after the second Assizes, if allow'd to be try'd at the Bar; full Costs shall be awarded to the Defendant, the Issues discharg'd, and the Causes of Action for ever extinguish'd.

I have always thought, that, next to the Difficulty in settling the Issues in Tryals at Law, by the needless Intricacy of special Pleadings, which are great Barriers in the Road to Justice, this Article ought to have the Preference to all others, for the Delay it occasions in the Determination of Property: For the Law having as yet made no necessary Provision in what Time, after Issues are join'd at Law, the respective Plaintiffs shall
at

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be oblig'd to bring the same to Tryal, nothing is more common, than that by this Defect Issues have laid many Years untry'd; during which Time, Plaintiffs have given Notice of Tryal, Assizes after Assizes, and Term after Term, and countermanded as often: And thus are Defendants prosecuted for what they are kept in Suspence about; are oblig'd from Time to Time to be at the Trouble and Expences of producing their Witnesses (who may live remote from the Place where their Presence is necessary) to attend the Tryal pursuant to such Notices; and after so long Procefs of Time, when incapable of making a Defence, by the Death, or other Disaster of some of their most material Evidence, the Defendants, if living, or otherwise their Heirs, or other proper Representatives are at last surpriz'd with Tryal. This Method of Proceeding must, if duly and impartially considered, be esteem'd highly inconsistent with the Rules of Justice. I

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conceive what will be immediately offered as a Reason in Mitigation of the Hardship here alledg'd, which is, That the Law has provided a Remedy for all this, by allowing Defendants to bring on (on Failure of the Plaintiffs in so doing) such Issues to Tryal by Provifo, and thereby have Power to free themselves from those Delays and Oppressions here complain'd of. To this I must reply, Tht I can by no Means approve this as a reasonable Expedient, or fit to be imposed upon the Defendant; for, as he is attack'd for a supposed Injury done, he ought to be treated as one only acting in a defensive Capacity: But if, to obtain Satisfaction for all the ill Effects that this Practice may occasion, he must become active in what he has only a Right to be passive, by this he is obliged to take a Load upon his own Shoulders, which his Adversary ought to bear. But, say the Professors, tho' this Practice may delay the Execution of Justice, and introduce a
Train

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Train of as ill Consequences as can be imagined, yet, by Disputes in Law continuing so long upon the Anvil, the Expences are enhanced; and surely it would be unreasonable to desire or expect any Ease or Indulgence, or even common Equity for the Subject, in Diminution of the Profits of our Profession. This damnable Doctrine, and Position has ever reigned too much in our Constitution, to the Overthrow of all good. publick-spirited Designs; and whether this may have the same unhappy Fate, the Event must be patiently expected, which shall conclude this sixth Section.



S E C T. VII.

From not trying all Proceedings in the several Courts of the Kingdom in a methodical Manner.

IT is proposed, that, for the greater Ease and Conveniency of the

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Suitors, as well as all others concern'd in the Administration of Justice, in all Courts of Judicature in the Kingdom, all Proceedings whatever, to be tried and determin'd in any of the same, shall be deliver'd by the Suitors to the proper Officer appointed to receive them, who shall make correct Lists of all such Proceedings, and affix such Lists up against the Bar of the Court where the same are to be tried, before the Courts shall enter upon any Business: And all Courts shall be oblig'd to try all Proceedings in Order, without the least Deviation, as the same shall be set down in such Lists, on strict Penalties. And that the Interest of what I here purpose, may appear more plain and intelligible, I shall offer these two Lists following as Precedents, to direct the Use of what I could wish was pursued.

Ebor. ff.

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Ebor. ff. Lent Affizes, (or Easter Term) 1726.

Nisi Prius Side.

Real Actions.

- 1 A & B.
- 2 C & D.
- 3 E & F.
- 4 G & H.
- 5 I & K.

Mix'd Actions.

- 6 L & M.
- 7 N & O.
- 8 P. & Q.
- 9 R & S.

Personal Actions.

- 10 T & U.
- 11 W & X.
- 12 Y & Z.

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Ebor. ff. Lent Affizes, (or Easter Term) 1726.

Crown Side.	Offences.
Traverses.	
1 Rex v. A.	Trespafs
2 Rex v. B.	
3 Rex v. C.	
4 Rex v. D.	
Commitments.	
5 Rex v. E.	High-Treason. Murder.
6 Rex v. F.	
7 Rex v. G.	
8 Rex v. H.	
Recognizances.	
9 Rex v. I.	Misdemeanor.
10 Rex v. K.	
11 Rex v. L.	
12 Rex v. M.	

F

If

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If the Order and Regularity here prescrib'd was strictly pursued in all Courts of Judicature, I apprehend the same would not only greatly tend to a much quicker Dispatch in the Administration of Justice, than can be expected from the confused Method they now proceed in, but save the Suitor great Expences, which they are now obliged to be at in obtaining their several Proceedings to be brought on to Tryal. And it would redound as much to the Ease and Conveniency of those who preside in all Courts, as those who attend, to have Business pass by so smoothly in this free and easy Channel. For, first, the Judge by knowing beforehand the Extent of the Business before him, might easily conceive what Time the same would take up in going thorough such Suits, and might thereby be able to ascertain the Continuance of such Courts in Proportion to the Length or Brevity of the Proceedings to be try'd. In the next Place, the Practicers would not fail of reaping an Advantage by

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by such a Method; for knowing the certain Order in which the Business they are imploy'd in would come on, they would be able to know what Briefs they were first to make themselves Masters of, which would be tried whilst the Scope and Substance of the same remained fresh in their Memories, and of which, by the Practice of postponing, or otherwise proceeding disorderly, they must naturally be obliged to undergo the Trouble of a second Perusal. Thirdly, the Suitors would find the greatest Account of all others in such a Regulation; for they would be able to know thereby the precise Time when their Suits would be brought before the Court, and, consequently, would save themselves and Witnesses the Loss of their Time, as well as Labour, in giving fruitless Attendances, which they are now almost always expos'd to; would prevent the Suitors from being put to those scandalous and extortive Expences of seeing Favourites, or other Under-

F 2

strapping

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strapping Officers, to obtain their Business to be brought on in due Time, as well as refreshing Fees to the Practicers, which are now, by a scandalous prevailing Custom, become even a common Demand, if the Proceedings in which they are retained happen not to come on at the appointed Time. I have endeavour'd to compose the two Lists inserted here, as general Precedents of what I propose to introduce, both in Civil and Criminal Cases, after a Method agreeable to Reason: For, as to the first, I have plac'd the Real and Mix'd Actions in the two Front Ranks, upon this Foundation, that, as those are generally Disputes of the greatest Consequence, take up the most Time in determining, as well as have the most Witnesses, who attend at the Expence of the Suitors, so they ought, both with Regard to their Consequence, and Ease to the Parties, to be in the first Place discharged. Then I proceed to Offences Criminal, where I have first placed Traverses, which

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which, being always join'd ready for Issue ought to be try'd whilst other Proceedings are preparing for the Tryal, that no Time may be lost. Then are set down Commitments and Recognizances; the first of which, who are ready, by reason of their Confinement, may be tried, whilst the others, who are at large upon their Securities, come in to make their Appearances. And, thus, would all Proceedings be transacted in Order and Symmetry, to the Advantage and Ease of all Parties; which, with my Wishes, that the same may meet with its desir'd Effect, shall conclude this Seventh Section.



S E C T. VIII.

From not inflicting a greater Penalty on Persons prosecuting Vexatious Suits for Trespases, Slander, and Batteries, than the Law has at present provided.

IT is proposed, that for the better preserving the Peace of the Community, and more effectually preventing Actions being brought on trifling Occasions, in all Actions for Slander, Battery, or Trespafs, where the Judge who tries the Cause shall not certify on the Back of the Record, that a Battery was prov'd, or that the Trespafs was wilful and malicious
or

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or the Title of the Freehold came chiefly in Question; if the Jury shall give Damages to the Plaintiff under Forty Shillings, treble Costs shall be awarded to the Defendant.

I am aware that the Legislature has already interpos'd in this Article, in providing, by a Statute made in the Reign of King *Charles II.* that, in all the Actions above cited, where the Plaintiff shall recover Damages under the Value of Forty Shillings, he shall have no more Costs than Damages; which, tho' it is a good Law, and has contributed much to the Diminution such sort of vexations and trifling Prosecutions, yet has not entirely cur'd the Disease, but is capable of further Improvement. I must confess, it might be a reasonable Supposition in the Legislature, when this Law was enacted, that the Penalties provided by it might have been sufficient effectually to have answered the good End for which it was made; because Resentment must be carried to a higher Degree than can be confis-

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tent with human Prudence, for any Person to engage in any Affair that will redound to his own Loss, purely to occasion the same to his Adversary: But such are the Effects of a natural litigious Disposition, or Malice, or the Ascendant that the Superior will assume over the Inferior, that the Reflexion of an equal Loss to themselves in such Cases, will not always stand in Competition with the great Pleasure and Satisfaction they conceive, of occasioning the same Inconveniency to those who shall not be so able to support it. Hence it comes to be too often an approved Resolution in Controversies of this Nature, where there is no solid Foundation of Complaint for any Injury committed, that the Expences accruing by the same to the Parties prosecuting are not regarded, so that as much, or more, may be created to those to whom they have professed an Aversion. And though such Practices are highly unjust, as well as unbecoming in those who make use

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use of them, yet the Law is more to be blamed in not providing effectual Measures to prevent a Disturbance of the Tranquillity and Ease of the Subject in Cases of this trifling and vexatious Nature. Now, whether the Innovation I have here propos'd to introduce of incurring the Penalty of paying Treble Costs, where Damages are given under such a Value, in Actions where the Law at present allows of Costs equal to the Value of such Damages, be a more effectual Method to curb or totally suppress the future Prosecution of them, than the present established Fundamental, which, doubtless, had the same View, tho' imperfectly finished, must be left to the Determination of superior Judgments, I hope, impartially, and for the Publick Good only, considered; which shall conclude this Eighth Section.

S E C T.



SECT. IX.

From the great Delays frequently occasion'd by Plaintiffs being allow'd to nonsuit themselves, and thereby having Liberty to bring such Issues again to Tryal, after full Evidence given in the same.

IT is propos'd, that the more effectually to prevent any Delay in the Determination of Property, by which Justice may fail of being speedily administered to the Party injur'd, every Plaintiff at Common Law shall have no Power to become Nonsuited, but shall be obliged, after the Record is deliver'd into Court, in order for Trial, to stand the Verdict; and if any Mistake

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take or Defect shall appear in the Pleadings, so that the real Scope and Substance of such Action shall not be duly set forth, such Action shall not be postpon'd by reason of the same, but shall be raz'd and amended in open Court, and made agreeable to the Truth; by which, a just and compleat Verdict may be obtain'd.

If the Method here prescrib'd, was strictly put in Execution, the same wou'd certainly redound to the great Ease and Conveniency of the Suitor, by preventing many Repetitions of that which might at the first Offer be determin'd, and occasion Loss to none but the Practicer, whose chief Profits arise only by such Delays, are enrich by the Oppression of their Fellow-Subjects, and grow fat by Plunder and Extortion. I have always esteem'd it a great Grievance to the Subject, (which will continue to be so, unless an effectual Remedy be apply'd,) and no less a Defect in the
Consti.

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Constitution of our Law, that when the Parties in Variance have been at the Trouble and Expences of bringing the Issue to a Tryal, any Measures should be allow'd to be made use of, occasion'd either by Mistake in the Proceedings, or other wilful Default of either Party, whereby Justice may be deferr'd or suspended : For this approv'd Maxim should be made a Fundamental in all States and Constitutions, That next to impartial Justice in the Determination of Property, Dispatch in the Execution deservedly ought to have the Preference. For how contradictory is it to the Rules of Common Justice; and much more so to the Strength and Force of Reason, that for a small Slip of a false Concord, the Want of pure Matter of Form, or other evasive Contrivance, (which, if a more material Imperfection, might receive immediate Redress, by the Means herein directed,) so essential a Right due to the
the

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the Subject, as the speedy Advancement of Equity, should meet with the least Stop or Interruption? For, as the Law secures to every Man his Inheritance or Property, and protects him in the quiet Enjoyment of both; is a Common Guarantee, to interpose her Power and Influence to prevent Violence or unjust Acquisitions; that the Rich may not depress the Poor, or the Strong crush down the Weak; so her chief Care should be to steer the nearest and plainest Course, in order to arrive at this great Point, and break down all Barriers whatever that may stand in the Way, to obstruct her in a free and easy Passage to the same: For, I can discern little or no Difference, between Confusion, or Laws to prevent it, if the latter are fix'd upon so high and difficult a Pinicle, as to be out of the Reach of any who shall have Occasion to seek Redress from them, or, at least, produce such Effects in the Pursuit of Justice, as to render the same,
when

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when obtain'd, abortive by the endless Labyrinths, and Circumvolutions that are to be pass'd thorough before Right can be attain'd. This, I conceive, it fully prov'd, if the common Attribute given to the Execution of our Laws is true, That the Remedy is worse than the Disease. Now, whether the Innovation here propos'd may contribute to give Relief in what I esteem a Grievance, and ought to be amended, must be submitted to better Judgment; which shall conclude this Ninth Section.

SECT.



S E C T. X.

From not confining Tryals at the Bar of any of the Superior Courts, (which are such additional Expences to Suitors, as well as Trouble to Jurors,) to Causes of higher Consequence than they are at present extended to.

IT is propos'd, that for the better preventing Expences to Suitors, as well as Trouble and Inconveniency to Jurors, no Tryal shall be allowed to be at the Bar of any of the Superior Courts, unless Affidavit be first made, by the Party moving for the same, that the Matter in Dispute, is of the full Value of Twenty Thousand Pounds.

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I conceive, that the present Practice of the Superior Courts is to allow of Tryals at the Bar, in real Actions, when they are of the value One Hundred Pounds a Year, or in those Personal, of Two Thousand Pounds; which I esteem liable to great Exception, and capable of Improvement on several Accounts, and in none more than these I shall here mention: For, first, I have always thought, tho' our Common Law is no where known but amongst ourselves, yet the Institution of it, in sending the Judges *Itenerant* twice a Year thorough the whole Kingdom, to assist and direct a Jury upon Oath in the Determination of all Offences, Civil and Criminal, in the Center of the County where they arise, excels all others in the Christian World for the Preservation of the publick Peace, and Ease and Conveniency to the Subject in obtaining Justice. Now, if the Assertion here laid down of the Excellency of this Method be approv'd as Fact, then I must infer, that as often

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as Suitors and Jurors are oblig'd to travel abroad, in the Pursuit of that which might be as effectually administer'd so near their own Doors, so often is the brightest Article in the Constitution invaded. This, I should apprehend, may be assign'd as one of the Reasons to support this Proposition: But if no regard be had to the Infringement of this necessary Fundamental, nor to the easy and speedy Method of administering Justice, which, doubtless, ought to be consider'd; yet certainly effectual Provision shou'd be made, that the Expences in obtaining it shou'd not be near, much more exceed the Value of the Matter in dispute. But so exorbitant are now the Fees of all the Practicers, and so excessive is the Toll for passing thorough the several Barriers that are met with in the High-Road to Justice, that numerous Instances may be cited, where the Charges of Tryals at the Bar of the Superior Courts, have amounted to more than the lowest Value before mention'd

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tion'd under which the Courts will not allow of the same. It may probably be alledg'd, that Tryals at the Affizes of each County are only subordinate, and are therefore liable to the Inspection and Superintendency of the Courts out of which the Action originally commences; and that Disputes of any tolerable Consequence had better have a decisive, tho' expensive Determination in the Courts above, than be subject to a second Tryal there, which they have Jurisdiction and Power to grant. But, I apprehend, that it wou'd conduce most to the publick Good, to have all Property of what Value soever determin'd in the proper County; for when the Dispute consisted only in Fact, one to preside wou'd be as effectual as a greater Number; and, if otherwise, that any Difficulty in Law arose, the same might receive an Explanation by the whole Court, within the Time allow'd to move in Arrest of Judgment, which wou'd occasion no Delay to either Party.

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ty. Whether this Proposition may be esteem'd reasonable, or not, I must submit; which shall conclude this Tenth Section.



S E C T. XI.

From not inflicting a Penalty on Persons admitted to sue in Forma Pauperis, (who too frequently abuse the Indulgence the Law has allow'd them,) when their Suits shall be adjudg'd frivolous and vexatious.

IT is propos'd, that a Corporal Punishment, by Fine and Imprisonment, shall be inflicted by the Court on Persons admitted to sue in *Forma Pauperis*, when their Suits shall be adjudg'd frivolous and vexatious, and tend only to the Disturbance of the

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quiet

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quiet Enjoyment of the Properties of the Subject, without any real Foundation of Title to what they demand.

It is most certain, that the Provision which the Law has made in this Case, is a wise and just Indulgence; nothing being more reasonable than that a Man's Poverty shou'd be no Impediment to his receiving an equal Share of the Laws of the Community of which, as a free Member, he is entitled to, and obtaining from them the Protection of himself and Property: Therefore, I must premise this as a Preliminary to explain what I have offer'd, that there is not the least Intent or Desire form'd to cancel or abridge this necessary Privilege ordain'd for the Weak and Impotent, when they shall not deviate from the original Design of its Institution, by pursuing the Measures of Vexation and Injustice. But as all Laws, and particularly our own, are liable to Abuse and Corruption, be the same form'd upon never so reasonable a Foundation

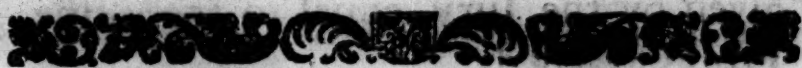
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Foundation, so if too great a Latitude is given in the first Institution of them, that which was intended as a Relief for a Part, may prove a general Grievance to the Whole, which I take to be the present Case. For such is the Tenderness and Indulgence that our Laws shew to what they stile *Paupers*, that all Courts are open to receive their Demands; which, if prov'd just, they recover with Damages for withholding the same, as also Costs; but, if on the contrary, their Pretensions are rejected, must be exempted from those Penalties that other Subjects, in the same Circumstances, are expos'd to. And I'm not in the least Doubt, but, that under the Protection and Umbrage of this Privilege, there are daily and numerous Instances to be found of Suits being commenc'd, where there is not the least Colour or Pretence of Right to the Property disputed, but are brought with this View alone, that by such Controversies there may be a Possibility of gaining something, but

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nothing can be lost. Now, as I apprehend, it wou'd be highly unjust, as well as unreasonable, and carry along with it a Sting of Cruelty, to deprive the Poor and Necessitous of the Means to procure for them the Benefit of the Law in Cases of real Equity, so in others, where there is none, nor any other Motive than the Expectations of Advantage arising from a Foundation of Injustice, or the Effects of a turbulent and vexatious Disposition, the Superior ought not to be molested in the Enjoyment of his Ease and Tranquility, or to have his Property invaded thus at Pleasure, with Impunity to the Offender. If a Medium to the two extremes cou'd be concerted, it wou'd contribute greatly to the preventing the abovesaid Abuses too frequently committed, and be a Means to preserve the Indulgence, allow'd by Law in this Behalf, free from Blemish and Corruption; and whether the Penalty here provided may be esteem'd to answer that End, the Event must be expected; which

which shall conclude this Eleventh Section.



S E C T. XII.

From not abolishing the several obsolete and intricate Writs, given in Real or Possessory Actions, and reducing them all to that of Ejectment.

IT is propos'd, that for the better quieting the Subjects in the Possession of their Estates, and prescribing a shorter Term in which all Demands in Law in real Actions, and others here set down, shall be made, the various Sorts of Writs, given in such Actions, shall be reduc'd to that of Ejectment; by which, alone, all Lands and Hereditaments

taments, Church-Livings and Dower, shall be recover'd; and that Damages for withholding Dower, shall be given by the Jury, equal to the Mesne Profits receiv'd.

I can't help being of Opinion, that the Design and Intent of all other sort of Writs given in Real Actions, might be more effectually answer'd, and Justice sooner and upon easier Terms obtain'd by Ejectment alone, than by all or any of the other ancient Methods: For the Difficulty and Abatements of Proceeding in such Actions as may not be frequently put in Practice, may be reasonably suppos'd to create Mistakes, and that of course must occasion Delay; which wou'd be prevented, if the same was pursued in a common and familiar Method, which is thereby render'd easy and obvious to all Parties concern'd. Now, as the Writ of Ejectment, which I here recommend in all Cases, is the most practical, and, consequently, most tending to a speedy

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speedy Determination of Property, and thereby most conducive to the general Advantage of the Subject; so is it most reasonable, by limiting a shorter Period of Time, in which the same can only be brought, than Writs in other kind of Real Actions are confin'd to. But so wide is the Difference between that I propose to establish, and those I have only Power to wish were suppress'd, that by the Institution of the Ejectment, 'tis provided, that the Allowance for the bringing of that Writ, shall be extended to no longer Term than that of twenty Years, to be counted from the Time of the Title first accruing, as wisely adjudging that Allotment to be sufficient Warning to pursue a Claim in for a just Demand: But, on the contrary, in the other Instances so great a Latitude is given, as that within the Term of fifty or sixty Years a real or pretended Right may be prosecuted; which I esteem a Grievance, and a great Defect in the Structure of our Laws:
For

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For when a Person has been so long in the uninterrupted Possession of a Property, and may esteem himself safe in the same, by such a Series of quiet Enjoyment, it may probably, and not without Reason, be thought hard, after that to meet with any Disturbance, and have his Title ripp'd open; when, by the Loss of Records, or other material Evidence, he may not be in a Capacity to make a suitable Defence. I conceive, that the Method here propos'd to be introduc'd, in Exchange for that already establish'd, would greatly contribute to the Re- pose of the Subject; for that a Train of ill Consequences, too numerous to be here repeated, may attend the Prosecution of the Law, grounded upon Titles so remote, and upon Foundations so ancient, which will not only interrupt the Peace and good Harmony that ought to be encourag'd in every Community, but may also produce Injustice. For, as it should be a fundamental Principle
inviolably

Regulation of the Law. 91

inviolably preserv'd in all Courts of Judicature, to administer Justice with all imaginable Speed, after Application is exhibited before them in that Behalf, so ought the Law, by which alone they are directed in all their Proceedings, to have the same Consideration, in providing against Titles lying too long dormant before they are put in Execution. And the Legislature, by the Statutes already made, relating to this Head, has shewn a favourable Construction of what I here propose, by limiting a short and reasonable Time, in which the Actions there specify'd shall be brought, on Penalty of having the same extinguish'd by Law, if not commenc'd within that Term. And, whether the same Maxim may be deem'd to hold good, in the Provision I have endeavour'd to form in Cases of the highest Importance, that has been the Inducement of limiting others of inferior Nature agreeable to the same Regulation, must be submitted to

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to better Judgement; which shall conclude this Twelfth Section.



S E C T. XIII.

From not inflicting a higher Penalty on the Crime of Wilful Perjury; on which the Lives and Properties of the Subjects so much depend.

IT is propos'd, That, for the more effectually deterring Persons from committing this Crime, so fatal in its Consequences, every one, legally convicted of wilful Perjury, in any Evidence given, either *viva voce*, or by Affidavit, in Matters Civil or Criminal, in any Court of Judicature in the Kingdom, shall suffer the Pains of Death, and be subject to all the Penalties and Forfeitures, by
Law

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Law, inflicted on Felony, without the Benefit of the Statute.

I have always been surpriz'd, when I have consider'd how much depends upon the Truth of Evidence, and how both the Lives and Properties of Subjects, of all Degrees, are expos'd to the greatest Dangers, by the Failure of it, that the Legislature has never yet esteem'd it necessary to inflict the highest Penalty, our Law will admit of, on the Commission of this heinous and destructive Crime. And I can't only greatly blame the Law for a Remissness, in not guarding against the Calamities that might ensue from this Defect in the Constitution, but must also be of Opinion, that there are great Inconsistences, both with Reason and Justice, in the original Structure of it, by inflicting the most heavy Penalties on Offences of inferior Nature, and subjecting those of the superlative Degree only to such as may not be sufficient to prevent them from being committed, or are, in any
Respect,

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Respect, adequate to the Mischiefs and Damages they may introduce. This, I conceive, will be the State of the Matter in Question, when set in a clear Light, and there duly and impartially consider'd. For our Law, at present, speaks thus, That when a Person shall be convicted of doing so much Injustice to his Fellow-Subject, as feloniously to take from his Person the Value of Twelve Pence, or of other Offences not of much greater Consequence, for such Wrongs, he shall suffer Death, and in a manner so ignominious as to be an eternal Stain to his own Memory, as well as Prejudice to the Posterity that may succeed him: But when, by false Testimony, a Train of as dangerous Consequences may happen, as can possibly befall Human Nature, so as that the Innocent shall be accus'd, and convicted of Crimes for which Life or Member shall be lost, and Blood corrupted; when Property shall be alienated from the true Owner,
and

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and appropriated to the Use of a spurious Impostor ; when Reputation and Character shall be traduc'd and vilified by pretended Guilt, of what the Party charg'd was no way privy to ; then, for being the Author of such monstrous Cruelties, a small Fine, attended with the infamous Punishment of the Pillory, must be adjudg'd to be a sufficient Compensation. If I have here set forth the Truth of the Fact, as well as the Provision of the Law made in this Behalf (in both which, I'm not apprehensive of having committed the least Error) it must be referr'd to the mature Reflection of every impartial Reader, whether this Fundamental calls for an immediate Redress, or is fit to be continued in the Ancient Channel. I own the Matter here treated of, is a very copious Subject, and ought not to be lightly and superficially handled, but should deservedly be represented in such full and lively Colours, as that the Importance of it may receive a
true

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true Impression : And should I descend to Particulars, and make a Schedule of all the Misfortunes and Disasters that the Sin of Perjury may accumulate upon Mankind in general, and produce all the Arguments that may obviously occur in Defence of what I here propose, of inflicting the most severe Penalty to prevent a Crime so highly destructive and pernicious, from being committed, the same would appear so numerous, as to swell this Treatise much above the Compass in which it was design'd to to be contain'd. But when I say, in general, and have here prov'd in the highest Instances, that all that is dear and valuable to the Subject, (if Loss of Life, Member, and Estate, is esteem'd so be) entirely depends upon the Subject-Matter of this Article, I conceive, every Thing necessary to enforce my Proposition, is fully compris'd in that short Assertion; which shall conclude this Thirteenth Section.

S E C T.



S E C T. XIV.

From not inflicting a higher Penalty on that heinous Offence of Barretry, so pernicious to the Ease and Tranquility of the Subject.

IT is proposed, that for more effectually securing Peace to the Subject, in the Enjoyment of Private Property, which is too frequently invaded by those who were rather instituted to preserve it, every Professor or Practicer of Law, within the Kingdom, legally convicted of Barretry, shall suffer the Pains of Death, and all other Penalties inflicted by Law on Felony, without the Benefit of the Statute.

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I believe, there is not any Offence cognizable by our Law that tends more to the Disturbance of the Repose of the Subject, or that is more frequently committed, or, when detected, is more rarely taken Notice of, or, at least, to any Effect, by a vigorous Prosecution, than that of Barretry. It is greatly to be wish'd, for the Good of the Publick, that for Offences of this Kind the Law was not only put in Execution, as oft as Occasions should offer, but that a Punishment was also provided by it, suitable to the Heinousness of the Crime.

Indeed, I conceive, a true Reason may be assign'd why Prosecutions of this Kind are not more frequent; which is, that all Courts of Judicature are so inclinable to shew such Countenance to the Practicers, in any hard Treatment that the Suitor may receive from them; and the Difficulty of obtaining any just Reprisal from that Principle, or, at least, if
other-

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otherwise, for any moderate Trouble or Expences, that the Parties injur'd chuse rather to be indolent, and rest contented with the Injustice, than to be harrafs'd and involved in such Perplexities as must attend the Pursuit of Right. And this Assertion is prov'd true, almost by daily Experience; when exorbitant Demands are made by Practicers; and that the greatest Part of the 'same, ought in Justice to be reduc'd: Yet, by the endless Windings and Evasions that are made use of, to prevent their Corruptions from receiving a just Censure, the Charges are so enhaunc'd, as to render any reasonable Abatement in the same fruitless, to the Party in whose Favour it is obtain'd. I shall decline making any other Reflection on this Head, than to declare my Sentiments, That such Proceedings in Courts and judicial Officers, who ought to have no other View, than that of an impartial and speedy Advancement of Right, are not agreeable

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to the Intent of their Institution. But that I may proceed to the Matter now in hand, I apprehend, the considering the ill Consequences that Barretry occasions, both with regard to the Disturbance of a free and easy Inter-
course of Life amongst the Members of the Community in general, and to the Waste and Desolation of private Property; in widening Breaches, and preventing Disputes relating to the same, from being in a friendly and amicable Manner compremis'd. The Penalty inflicted by Law on such Offences, is no way adequate to the Injuries that are derived from them: For when a Person, to encrease the Profits of his own Profession, has sought all Opportunities to sow such Seeds of Dissention, as thereby to enflame the whole Neighbourhood where he lives, (which must introduce as mischievous and fatal Consequences, as human Reason can possibly be able to suggest,) our Law generally, with too great Lenity, dispences

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pences with a small Fine, join'd perhaps to a short Imprisonment and the Pillory, (which are seldom put in Execution to the full Extent,) as an ample Recompence for such notorious Wickedness and Corruption. And this sort of gentle Treatment, (for it can hardly be stiled Punishment; considering the Nature of the Offence,) neither discourages such Practices from being once committed, nor when they are done, disables the Offender from relapsing into the same Crimes. For when such a Conviction is over, and the Sentence satisfy'd, the Delinquent is set at Liberty, and may return again into the same Country where he had before spread so dangerous an Infection, and lies under no Incapacity, following the same Profession which he has brought such Disgrace upon, and so much perverted to the Wrong of Mankind, but may pursue the same Course of Life as formerly; only, in all likelihood, to a higher Degree in Resentment, for such a Prosecution.

secution. And these Practices are not more pernicious than frequent: For I have always been of an Opinion, that the long and expensive Controversies subsisting in private Families, (which never fails of producing Confusion and Penury, as well as making ill Blood, and preventing that good Harmony which ought to be preserved there) are generally to be attributed to some Poisonous Snakes of this sort of Breed, who thrive by the Plunder and Wreck gain'd by such Storms. Now if this Offence is attended with such ill Effects as are here stated, I should esteem no Penalty the Law could enforce, too great for the Nature of the Crime. But, whether what I have propos'd, may be thought to harsh, or what now inflicted too gentle, must be submitted; which shall conclude this Fourteenth Section.

S E C T.



SECT. XV.

From the excessive Jurisdiction of the Courts of Equity (the present Gulph for the Determination of all Disputes) in staying Suits commenc'd at Law by Injunction, and confining to those Courts only the Cognizance of deciding Property in several Branches, which wou'd, with greater Ease and Speed to the Subject, be determin'd in the Courts of Law.

IT is propos'd, that for the better curbing the growing and exorbitant Power of the Courts of Equity, no Writ of Injunction to stay Suits

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commenc'd in the Courts of Law shall, for the future, issue out of those of Equity, upon the Defendant's Motion for a *Dedimus Potestatem*, as usual; but, upon the Plaintiff's Instance for the same, a Petition shall be presented to the Court, who shall, thereupon, appoint a short Time for all Parties to attend, when the Allegations on both Sides for and against it shall be argued; and, if the Matter in Dispute is adjudg'd to be capable of receiving a full Determination at Common Law, no Injunction shall be allow'd, but, by Order grounded upon such Petition, the Bill in Equity shall be dismiss'd, with treble Costs to the Defendant.

The boundless Power of the Courts of Equity in the Kingdom, has not only been a Complaint tender'd for Redress, almost, in all Reigns, but a great Grievance to the Subject in every Age. And, if there was real Ground for such Complaints formerly, the same ought now surely to subsist in a higher Degree, for that their Jurisdiction

tion daily encreases, and is extended to a greater Latitude than has hitherto been known; insomuch, that three Parts in Four, either in Number or Value, of all Disputes relating to Property, instead of being decided by that easy and excellent Method prescrib'd by the Common Law, are subjected to wait the tedious and expensive Determinations of those Courts. And when I consider the Superintendency and Authority that those Courts either have a Right to, or do assume, over the Common Law, I shou'd not be in the least surpriz'd if that whole Fa-
brick was quite subverted and render'd useless, which I shall endeavour to prove by this one Instance following *viz.* I'll suppose a Demand is commenc'd at Law for the Recovery of a Property that is never so obvious, and may with the greatest Ease, receive ample Satisfaction and correct Justice there; yet the Courts of Equity being open to receive all Applications that shall be tender'd there, under the
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Notion of Relief from Hardship and Oppression, that may be met with elsewhere, an Injunction is of course granted, upon the Defendant's praying a *Dedimus*, till the answer shall come in, (till which time all Proceedings must be at a profound stand,) and thereby the Court enabled to form a Judgment, whether 'tis more expedient that such a Matter shou'd be confin'd to a Determination there, or sent back to the Court of first Resort; then, the next step to be made, in order to remove this Barrier, is to make Application for a Dissolution of the Injunction; which if those Courts shall not think fit to grant, but shall conceive an Idea, and from thence form a Resolution, of retaining the Decision of that Property within their own Power and Jurisdiction, by that Embargo alone there is an End of the common Law. I apprehend, that a Power so extensive as this is, and which, if not in due Time controul'd, may at last end in Arbitrary Proceedings, ought not to be

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be vested in one single Hand. I wou'd not be understood, when I am endeavouring to introduce the most easy Method for the Decision of Property, which must unavoidably check the Progress of the Courts of Equity, that those ought to be shrunk in their Power or suppress'd (as the Courts of Star-Chamber, and others, have been by the Legislative Authority,) for any exorbitant Practices, (except those of Delay and Expences,) or unrighteous Judgments, having always had a quite different Sentiment of their Proceedings, and that no fairer Opportunity cou'd be afforded for an exact Administration of Justice than there, provided Patience was not wanting to support the Delay, and Money to defray the Expences, till the same cou'd be obtain'd: But, this I will pretend to affirm in the Behalf of the Excellency of the Common Law, that whatever Branches of Property the Courts of Equity are calculated to determine, whether, as to enforcing the Execution of Trusts, (the Cognizance

Cognizance, of which is peculiar to them,) stating Accounts, or any other Matter, the same cou'd be as effectually administred by the Common Law, with Regard to Justice more so, with that of preventing Delay and Expences, and most of all so, with that of Ease and Conveniency to to the Subject. Now, if I have committed no Error in stating the Use and Conveniency of that Ancient Institution, which I own myself to have the greatest Tendency and Regard for, and whose Growth I wou'd earnestly endeavour to promote and have, with no less Exactness, describ'd that excessive Power which Eclipses her Rays, and obstructs them from shining forth in their full Lustre; I can discern no Reason, why the solid uniform Foundation of the One shou'd not be built upon, and made still more stately and flourishing, out of the Ruines and Demolition of the other, which will lead me to the Pursuit of some other Considerations, which I conceive may contribute to the Advancement

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ment of these Purpofes, and fhall therefore conclude this Fifteenth Section.



S E C T. XVI.

From not allowing Debts due upon Bond, either againft the Obliger or his proper Representative, to be recover'd only by Action at Common Law.

IT is propos'd, that for the better enforcing the excellent Use of the Common Law, all Debts due upon Bond, whether sued for againft the Obliger in his Life-time, or his Heirs, Executors, or Administrators, after his Death, fhall be recover'd only by Action at Law; and all Bills filed in the Courts of Equity for any Demands grounded upon fuch Securities, fhall be difmiffed with Treble Cofts to the Defendant.

I am appris'd how the Law in this Case stands; that Debts due upon Bond are recoverable by no other method than by Action at Law against the Person of the Obliger, and how the same is diverted, when Means are taken to obtain such against those who succeed him: For when the same affect the Heir, Executor, or Administrator, under the Pretence of discovering the certain Limitation of the real Estate, for which the Heir is answerable, or obliging the other to come to a true and regular Account of the Assets of the Deceas'd, the Creditors all fly to Equity, and instead of pursuing that speedy Circuit of Justice by Law provided for the Recovery of such Debts, in the first Instance, are thus diverted from passing in that Channel, in Exchange for another much less commodious and beneficial. I only design to include Benefits arising to the Suitors; for there is so wide a difference in the Profits accruing to the Practicers, between Disputes in Law, and those in

3 Equity

Regulation of the Law. III

Equity, by the quick Dispatch of the one, and the slow and difficult Marches of the other, that I can, without the Spirit of Prophecy, easily determine, by whose Instigation, and for whose Advantage, this Method of Proceeding is promoted. And it is impossible that the Decay of a general Use of the Common Law can be justly attributed to any other Cause than that I last mention'd; for the whole System has been compil'd in such admirable Order and Symetry, that there is, in the first Institution, such ample Provision made to answer every Occurrence, and redress each Grievance in human Life, that none can receive any just Occasion to seek Refuge elsewhere, against Hardships or Severities impos'd by her Judgments, or for not affording as effectual Remedies for the Advancement of Right, as any other Judicatures can pretend to. But, as the Articles next following relate to the vesting the Common Law with such Powers, as may further extend the Bounds
and

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and Jurisdiction of it, in which an
Opportunity will offer to enlarge upon
the excellent Contrivance of the whole
Frame, and enumerate the several
Particulars, in which it consist; I shall
decline now to urge any Thing more in
Favour and Support of this Proposition,
and must therefore, conclude this Six-
teenth Section.



S E C T. XVII.

*From not allowing Portions
and Legacies, whether charg'd
upon Real or Personal E-
states, to be recover'd on-
ly by Action at Common
Law.*

IT is propos'd, for the more easy
and speedy Advancement of
Justice, by introducing a Method
from

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from which Legatees may the most effectually receive the Benefit intended them by Testators: All Portions and Legacies, if charg'd upon personal Assets, shall not be confin'd to be sued for either in the Courts of Equity, or those Ecclesiastical; or if charg'd upon Lands and Hereditaments alone, then to the Courts of Equity, according to the present establish'd Regulation; but shall be recover'd by Action at Common Law, and to have Precedence in Payment, next to Debts grounded on simple Contract: And all Bills filed in the Courts of Equity, for enforcing a Compliance in either of these Branches of Property, shall be dismiss'd with treble Costs to the Defendant. I can't help being of Opinion, that the Method here prescrib'd, tho' contrary to the present Establishment, and what has been practis'd for a long Series of Time, would, notwithstanding, be a Means to ease the Subject of a heavy Load of Oppression, (occasion'd

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by the Delay and Expences constantly attending the Determination of Property in the Courts of Equity,) which hitherto they have been expos'd to, and in every Respect as effectually conduce to the Advancement of Justice. It must be confess'd, that what I here propose to introduce would not only be an Innovation in the Structure of our Constitution, but also, greatly impair the Proceedings, and eclipse the Grandeur and Jurisdiction of those Courts that have hitherto exercis'd a paramount Sway and Authority over all others, and pretended to a sort of Infallibility in their Decisions; which can't be temper'd by any other Allay than that of impartially considering, whether the old or new Institution would better answer the End, for which all Laws either are or ought to be calculated, of well governing that Community over which they preside. For tho' Injustice may not be suffer'd to be committed with
Impu-

Regulation of the Law. 115

Impunity, or Grievances fail of being redress'd in the Generality, yet, I apprehend, no Laws can be deem'd to govern well, or, at least, to be well executed, when Methods not so agreeable to the Indulgence and Conveniency of the Subject are preferr'd, and others more conducive to those Ends postpon'd. And if no Regard be had to the Judgment and Recommendations of this Author, who acts only in an inferior Sphere of Life, yet if the Sentiments of the greatest Oracles that ever were conversant in our Laws, are prov'd to be corresponding with them, they ought, upon that Account, to be receiv'd with more Weight, and to make a deeper Impression: For whoever will have Recourse to the Writings of the Judicious and Learned *Coke* and *Hale*, will find, that they applaud the Excellency of the Common Law above all others, and would enforce the absolute Use of it: They always express an utter Abhorrence to all written Evidence, as

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highly liable to pervert the Truth and introduce Fraud; and extol the exquisite Method of trying Property by a Jury, who are guided by living Testimony and Records, as the most safe and infallible Means in the World, to obtain a just decisive Sentence. And one of the learned Gentlemen above cited, in displaying upon the admirable Structure of the Common Law, in being provided with all the Materials necessary to advance Right and Justice that any other can pretend to, affirms, that the *Chancery* has, in Process of Time, usurp'd a Power of determining Property, which was no way incident to the original Institution of it, as being only first establish'd as an *Officina Brevium*, (not a Court of Justice,) to be subordinate Officers to the Common Law, in making out the Writs and Precepts for the Execution of their Judgments. And thus we find, that one hir'd in the Capacity of a Servant, may at length, by too much Favour and Indulgence, be-
come

come to be the Master. Now, the Assertions of these two eminent Persons, are not only to be rely'd upon from their great Abilities, and Strength; and Force of their Reason, but are prov'd true by almost daily Experience: For so great a Tendency and Regard have the Courts of Equity to the Efficacy of a Tryal at Law, that their tender Consciences are never so well satisfy'd, nor never in so good an Ability to decree, according to right Reason and Justice, as from the Information they receive thereby; by which, it so frequently happens, that in Cases of the highest Consequence, Issues at Law are directed; and that the Equity reserv'd, seldom produce more than an exact Adherence to the Verdict found. But that I may proceed to the Subject-Matter of this Article, and shew my Reasons why Portions and Legacies, whether charg'd upon Land or Assets, may be 'as effectually recover'd at Common Law, as in Equity. I shall begin with those affecting

I 3.

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fecting the Inheritance. I conceive an Idea, that a Testator has bequeath'd a Portion to his Child, or Legacy to his Friend or Relation, and has charg'd his Real Estate, or some Part thereof, with the Payment of the same: The usual Course of proceeding, on Non-performance of the Request, is to file a Bill in Equity; to which the Heir and Trustees in the Will are made Parties; and after Proof taken by written Evidence, if there appears to be no Entail, to prevent the Testator from making a free Disposition of the Estate; a Decree is made for a Sale of Part of it, or to oblige the Heir and Trustees to make Payment of the Portion, with a Writ of Execution to enforce Obedience to the Decree. Now in this Case, if an Action at Law was brought against the Heir, and the Testator's Title and Power of devising was clear'd up by producing of Deeds, and Evidence given *viva voce* to the Jury, and Damages awarded by them,
equal

equal to the Portion or Legacy left; and after Judgment had, the Lands charg'd therewith to be extended 'till such Damages and Costs were satisfy'd; I should be glad to be inform'd, why this last Expedient (if made practicable by the Legislative Authority) might not, in every Respect, be approv'd better than the other Method now in Use. Now, in the other Instance, if a Legacy is left charg'd upon Assets, a Bill in Equity must be filed against the Executors or Administrators, to discover of what Value the Testator's Personal Estate was, and how the same has been apply'd, and the Parties to be examin'd upon Interrogatories before a Master, that thereby, the Accompt may be stated and reported to the Court, in order for a Decree there: But instead of this Method, if an Action at Law was brought by the Legatee against the Executors or Administrators, and all this Proof had before Auditors assign'd, as in an Action of Accompt, who

might state the Fact, and balance the Accompt of the Testator's Personal Estate, in order for the Jury to assess Damages equal to the Value of the Legacy left; if there appear'd to be Assets remaining, after all Debts paid, sufficient to answer the same, I am at a Loss to discover the least Colour of any solid Objection, why this Way of Proceeding ought not to be, in the highest Degree, preferr'd before the other. For the Decision would be procur'd much sooner, the Testimony more safe, and the Expences much lighter. And this last Consideration, in all likelihood, may be the true Reason why the Method most conducive to Delay and Oppression shall be pursu'd, and the other, which would have the contrary Effect, be neglected and depress'd; which shall conclude this Seventeenth Section.

S E C T:



S E C T. XVIII.

From the great Expences accruing to the Suitors, by the voluminous Method of drawing up the interlocutory Orders and final Decrees of the Courts of Equity; and from the Want of shortening the interlocutory Proceedings, and better regulating the Practice of those Courts in several Particulars.

IT is propos'd, that the better to prevent the great and unnecessary Expences hitherto occasion'd, for Want of a better Regulation of the Practice of those Courts, in these several Branches following, viz.

I. In

- I. In making so many Motions, or preferring Petitions, previous to the final Hearing.
- II. In filing original Affidavits, and reading examin'd Copies.
- III. In the voluminous Method of drawing up the interlocutory Orders and Decrees, by inserting the needless Recitals of all the former Proceedings, practis'd for no other Use than to encrease the Profits of the Offices concern'd in the same.
- IV. In limiting too long Time before Defendants are allow'd to dismiss Bills for Want of Prosecution.
- V. In the tedious Method of selling Estates decreed to be sold by those Courts.

The Manner of proceeding, hereafter directed; be pursued, which, I conceive

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conceive, wou'd give Ease in each Part before alledg'd to want Redress.

Now, as to the first, I propose that all Writs, either to swear Defendants Answers to Bills filed, to assign Guardians for Infants, or otherwise, shall issue forth without any Motion or Petition for the same; and in like manner, Publication to pass the first Term after such Answer put in, and each Cause set down for Hearing, whether upon Answer, Plea, or Demurrer, (in Order, and without any undue Preference, as Publication shall pass in the same,) in the same Term; and all other necessary Proceedings, previous to the final Hearing, to be had without any additional Charges to the Sui-tor, as hitherto oblig'd to, in obtaining Leave of the Court for the same; which might easily be done, if a general Rule was prescrib'd in what Manner all such Proceedings shou'd of Course issue forth.

For

For why may not all subsequent *Procefs* go out without Leave, as well as the *Subpœna*, which has always done so, without any other Authority, than that of a Certificate from the proper Officer that a Bill is filed? For, whoever will inspect a Bill made for the Charges of a Suit in Equity, will find, that two Thirds of it are occasion'd by the numerous Motions and Windings precedent to the final Hearing, which, if any Establishment cou'd be made to prevent, as doubtless there might be, so great a Weight ought not, in any Respect, to be laid upon the Suitors.

Now, as to the Second, I propose, that all Original Affidavits shall be engross'd on Parchment, cut in the Shape of a Roll, for the Conveniency of folding up, and such to be read in Court, and afterwards kept on Record, which will be as effectual to preserve the Testimony from being extinguish'd, as the present Practice of filing them, and save the Suitors great Charges they now are expos'd to in pursuing that Method.

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Method. But, tho' this Proposition might produce all the good Effects, possibly to be wish'd for, on the Part of the Suitors, yet, it will quite suppress an Office in the Law, and carve out less Work for the Practicer, and, therefore, whether it may meet with Approbation or not on these Accounts, may not be a little dubious.

Now, as to the Third, I propose that no Recital of any of the former Proceedings be made in any interlocutory or decretal Order, but that short Precedents in both Cases be establish'd, sufficient only to express fully the Scope and Substance of the Matter order'd or decreed. For by the prolix Method now us'd in drawing up such Orders, Business is not only delay'd, but the Suitors put to an extravagant Expence, insomuch, that a decretal Order, the Substance of which might be compriz'd in a very small Compass, is swell'd to the Size of an ordinary Bundle; and in some Cases of inferior Consequence, amounts

mounts to a considerable Proportion of the Value of the Dispute in question.

This Abuse, in my Opinion, must have deriv'd its first Rise, from the Practice of taking so much a Sheet; which had been prevented, if, instead of that Method a Price had been fix'd for each Order, suitable to such a Length as would have reasonably suffic'd to express the Purport of the Judgment pronounc'd. And certainly, this Usage must rather be esteem'd the Effect of Law-Craft, than that of real Necessity, essential to the Courts of Equity, and not to other Judicatures; for the High House of Parliament, the Dernier Resort of Justice, whose Orders bear an absolute Sway and Authority over all others, are still contain'd within a convenient Brevity. And, I conceive, all Parties would gain by the Suppression of this unwarrantable Practice; but the Registers of the Court, whose particular Interests ought to have no Consideration

ration in a Case of so universal a Concern.

Now, as to the Fourth, I propose that all Bills filed in Equity, not prosecuted by the Plaintiffs within one Term after the Defendant's Answer put in, shall the second Term after such Answer filed be dismissed with full Costs to the Defendant. For I apprehend, that the Time now allow'd till Dismission is too long, and tends to the creating Expences, as well as keeping the Party prosecuted in Suspence about the Event of what appears to have no Weight in, by the Plaintiffs slow Proceeding in the same; upon all which Accounts, (if no others, more strenuous, can be assign'd to support the Continuance of the present Practice,) what I propose to introduce may be a proper Expedient.

Now, as to the Fifth and last Particular, I propose that instead of the delatory and expensive Method of selling Estates to the best Bidder, before

before a Master in *Chancery*, or Deputy Remembrancer of the *Exchequer*, the same shall be sold by publick Cant and Auction in open Court, the chief Judges of those Courts then sitting there, the next Term after that in which any Decree for a Sale shall be made, giving in the Interim publick Notice of each respective sale by three Advertisements in the *London Gazette*, ten Days distant from each other. This Method, I think, wou'd tend to the Ease and Advantage of all Parties; for by such a quick and peremptory Sale, Creditors and Legatees would sooner receive their respective Debts and Legacies; the Debtor, whose Estate is to be sold, would sooner be at Ease, by getting free from his Incumbrances, and Purchasers by knowing the precise Time when they could be in Possession of the Estates bought, would be encourag'd to offer the full Value at once, who are discourag'd from engaging in such Purchases, by the great Delay

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Delay and Difficulties attending Sales
by the present Method us'd in those
Courts.

All which must be submitted; and
shall therefore conclude this Eigh-
teenth Section.



K

SECT.



S E C T. XIX.

From the great Abuses frequently committed by Executors and Testamentary Guardians, by not being oblig'd to give Security for their faithfully answering the Assets, and yearly accounting for the Profits of the Estates intrusted with them, in like Manner as an Administrator has always done to the Ordinary.

IT is propos'd, that the better to prevent the Executors and Testamentary Guardians from wasting the Assets and real Estates committed to them, every Executor and Testamentary Guardian, before they enter upon the Execution of their respective Trusts, shall

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shall be oblig'd to enter into a Recognizance to the Court of *Chancery*, to be taken before a Master in Ordinary or Extraordinary of that Court, and there to be filed and kept on Record, for such Executor's truly answering the Testator's Personal Estate; and for such Testamentary Guardian's truly accompting yearly before the proper Officer of the said Court, for the Profits of the real Estate, and paying the Balance of the same into the Bank of *England*; and in Case such Guardians shall refuse to enter into such Security, the Court of *Chancery* to appoint a Receiver of the Rents of such Real Estate, who shall enter such Recognizance, as aforesaid.

When 'tis consider'd, how frequently Executors make indirect Applications of the Effects of their Testators, to the great Loss of, as well as defrauding lawful Creditors of their just Demands; and what great Wrongs and Oppressions Infants do, for the Generality, suffer by the Corruption

or Negligence of their Guardians, in the Management of their Estates during their Minority; I hope, either what is here propos'd, or some other as effectual Regulation, will be thought reasonable and necessary to be made, to prevent for the future, such Injuries from being committed: For it too often happens, that Executors, instead of impartially executing their Trust, by paying all lawful Debts affecting the same, as far as the Effects will extend to answer, enter into Measures with the Friends or Relations of the Testator, to whose secret Use and Advantage, with a due Regard had to their own Interest, they are apply'd; by which Creditors are excluded, if they tamely submit to such Treatment; or, in order to obtain Relief, are oblig'd to resort to such tedious and expensive Methods, as only prove slender Expedients to procure effectual Redress. And as to the other Branch, relating to Guardians, it can be so rarely instanced, that ever they have acquitted themselves

themselves as they ought to do, by a strict and frugal Management of the Estates of which they have a Superintendency, and accounting regularly every Year for the Profits, and vesting the Balance in Securities for Improvement; which Usage would always be shewn, if due Regard to Justice was had; that the Minor, upon his Arrival at Maturity, instead of finding himself in flourishing and abounding Circumstances, which might be reasonably expected, from a long Cessation of Expences, except those of Education, and accumulated Profits of the Estate in Trust, is too often made sensible, that the Time of his Minority has tended to the Advancement of the Family of the Guardian, on the Ruin or Depression of his own. And these Trustees are, for the most Part, so apprehensive of the Treatment shewn to Minors, and of the troublesome Consequences that may attend it, that the first Peice of Subtilty and Dexterity us'd by them, is to obtain

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a General Release of all Transactions by-past, (from those, who at their Years, are generally too volatile, prone to Pleasure, and averse to Business, either to judge or act prudently and sedately,) to prevent any Enquiry into Management that will not stand the Test of a narrow Inspection. And I am surpriz'd, that the Court of Equity, to whom is solely committed a Power of enforcing the Execution of Trusts, who is the common Guardian, and whose Province is to interfere in the Nomination of such, or Receivers, in Cases where none are appointed, or, where those so constituted refuse to act, has never yet thought a Remedy in this Behalf to be a proper Subject for their Consideration. It has always been an establish'd Rule, in the Courts Ecclesiastical, to grant no Administration, 'till the Party obtaining the same, has given Security for his faithful Discharge of that Trust: The same is insisted upon by the Court of Equity, from all Receivers

ceivers appointed by that Authority: And I can discern no just Reason why Executors and Guardians, who are placed in the same Situation, and intrusted with the Execution of the same Concerns, should not be oblig'd to lie under the same Restrictions. I conceive, that the one sort being made by the Testator, and the other, by Virtue of the Power delegated to Courts to supply the Defect of such a Nomination, ought not to make any Difference; for since both are liable to answer a Prosecution in Equity, for Male-Administration of the Trust committed to them, and liable to their Censures, so there ought to be Security given to answer them, if thereby ordered to refund what has been unjustly apply'd; which might still add this further good Consequence, which is, That they knowing themselves to lie under the Penalty of a Security given to a Court, vested with Power to controul all their Proceedings, may, thereby, be prevented from engaging

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in any such indirect Practices, as might deserve their being called in Question about them. Whether what I have here offer'd, may be esteem'd reasonable, or not, must be submitted; which shall conclude this Nineteenth Section.



SECT.



S E C T. XX.

From the Want of suppressing the many inferior Courts in the Kingdom, prov'd so infamous and corrupt by their Proceedings, and appropriating the Decision of all Disputes under a reasonable Value, to one convenient Court of Judicature in the County where they arise, where there would be an easy Expence, and a quick Circuit of Justice.

IT is propos'd, for the greater Conveniency of the Subject, in recovering, by an easy Method, small Debts, which would generally arise from Contracts of low Commerce;
all

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all inferior Courts, now subsisting in each County, (which are prov'd by their corrupt Practices to be rather Nurseries of Theft and Extortion, than just Deciders of Property,) shall be suppress'd and abolish'd, and reduced to one in each County, or Riding, within the Kingdom, in which all Debts under a reasonable Value, as shall be hereafter prescrib'd, shall be prosecuted for in a short and summary Way, by Summons and Adjudication, after the Manner of a Court of Conscience, and by such Means as small Tythes under the Value of forty Shillings, and Debts relating to the Revenue of the General Post-Office, under that of Five Pounds, are now limited by different Statutes to be recover'd. And as the Legislature has already thought convenient to vest the Determination of Property in these two last Instances, in the Quarter Sessions of the Peace; which, by long Experience, is prov'd to be the best Court that ever was instituted, for
the

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the general Advantage and Ease of the Subject, I propose that the Recovery of all Debts, as aforesaid, under the Value of Five or Ten Pounds, as shall be esteem'd most reasonable, shall be confin'd to that Court alone, with proper Limitations relating to the Method of Proceeding, ascertaining the Expence; and after Judgment given, of obtaining an Appeal to a superior Judicature, as followeth:

First, That Application shall be made by the Plaintiff, or Creditor, to a Justice of the Peace of the County or Riding, residing next to the Place where the Debt was contracted, for a Warrant under his Hand and Seal, to summons the Defendant or Debtor six Days, at least, before the holding of each Quarter-Sessions, to appear there, and shew Cause why Judgment should not be given against him, for the Recovery of the Debt; the Value of which, shall be specify'd in the Summons; Proof being made
to

to that Court, by the Oath of one Witness, that such Summons was serv'd personally, within the Time limited, as aforesaid, on the Defendant, or left at his most usual Place of Abode.

Secondly, That upon the Defendant's appearing, and defending such Demand brought against him, Judgment shall be given by the Court for either Party according to Right and Justice: Or, in Default thereof, (Proof being made of summoning the Defendant, as aforesaid,) the like Judgment shall be given against him, for the Value of the Debt, prov'd by the Plaintiff to be justly due to him, with Costs to be ascertain'd; and an Order of such Court made, directed to the Sheriff of the County to which such Court shall belong, or of any other County, where the Party, against whom Judgment shall be given, or his Effects shall be found, to apprehend and imprison the Body, and seize the Effects, 'till the Damages

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ges and Costs, specify'd in such Warrant of Distress, shall be satisfy'd.

Thirdly, That the better to keep the subordinate Magistrate within due Bounds, by allowiug an Appeal to a superior Judicature, to revise or controul, if Occasion requires it, their Judgments; the Party dissenting from the same, shall have Power before Execution taken thereon, (upon giving sufficient Security to the other, in whose Favour Judgment shall be given, to pay the Costs occasion'd by such Appeal, if the Judgment given below shall be affirm'd,) to remove by *Habeas Corpus*, all the Proceedings out of the *Quarter-Sessions*, into the Court of *King's-Bench*.

Fourthly, That as by the Innovation here propos'd, the Power and Jurisdiction of the Justices of the Peace will be enlarg'd, to prevent any low and indirect Practices, as much as possible, from being committed; none but
but

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but those of the highest Estates, Probity, and Knowledge, in each County, shall be intrusted with that Commission.

The Form of the Warrant of Summons.

Ebor. ff. A. & B.

YOU are hereby summon'd to appear
at the General Quarter-Sessions of
the Peace, to be holden, the Day
of next, at C. in the said
County, to answer a Debt of five Pounds,
demanded of you by the said A. Appli-
cation having been made to me, by the
said A. in this Behalf. Given under
my Hand and Seal, this Day of
1726.

To B. of G. in the
said County.

C. D.

The

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The Form of the Order, after Judgment.

Ebor ꝑ. A. & B.

Ad Generalem Quarterialem Sessionem
Pacis, &c.

ORDER'D, That the Sum of
Pounds be adjudg'd to the said
A. for Damages, and Shillings
for Cost of Suit, against the said B. and
that you apprehend the Body of the said
B. and him detain in safe Custody, and
take in Execution the Goods and Chattels
of the said B. if found within your
respective Jurisdiction, and them legally
appraise and sell, for satisfying the said
Damages and Costs; which you are
hereby impowered to pay to the said A.
And for your so doing, this shall be to
you, and every of your Deputies, a
sufficient Warrant.

Per Curiam

To all Sheriffs within
the Kingdom of
South Britain, or
their Deputies.

D.

I conceive,

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I conceive, tho' the Proposition here laid down may meet with great Exception as introducing a Method for the Recovery of Property entirely new, and foreign to the ancient Course of Proceeding; yet it would in the highest Degree contribute to the Ease of the Subject, and be a more effectual Means to obtain a speedy and convenient Determination, with regard to Trouble and Expence thereby accruing to the Suitor; and no less so, with that of procuring impartial Justice, than the Old Institution. And tho' the *Quarter Sessions* was design'd only as a Court for the Preservation of the publick Peace; and therefore, to invest the same with a Power of deciding in Civil Cases may be esteem'd to deviate from its original Plan, yet, by the Situation of the Judges, being interspers'd over the whole Kingdom at convenient Distances from each other, and its Method of adjourning from Place to Place, in extensive Counties, thereby to be

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able

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able to administer Justice to the Suitor with the utmost Easy and Conveniency, will, above all other Courts, best answer the general Advantage intended to the Subject, by the Innovation here propos'd. For if a Parallel be drawn between the inferior Courts of the Kingdom, to which the Recovery of Property of small Value is now assign'd, and a due Consideration had to their Method of Proceeding, and that Court hereby intended to be vested with some Authority instead thereof; the one can't possibly, in any Degree, come in Competition with the other, for affording equal Conveniency, and general Advantage to the Subject. For the Courts now establish'd for these Purposes, are always held in one fix'd Station, and have no such Regard to the Suitor, as to adjourn for their greater Ease and Conveniency: Besides, their Proceedings are carry'd on in a difficult Method, and run in a Language generally unknown to the vulgar Sort of the People, by which they

L

are

are oblig'd to have Recourse to Assistance (not altogether for their Interest) to manage their Business and espouse their Cause: But the other, in being impower'd to pursue the Method here prescrib'd, of determining Disputes in a summary Way, from the convenient Situation of the Judges, and their excellent Manner of disposing their Judicatures for publick Advantage, the whole Frame of their Proceedings would appear in such Order and Simetry, and such Facility annex'd to them, that no Person would be oblig'd to move a great Distance from his own Doors in applying to a Magistrate for the first Process, nor much farther to have a decisive Sentence. The Course of pursuing this Method would be so easy and familiar, as to be render'd obvious to the lowest Capacity, that each Party griev'd might be his own Agent, and negotiate his own Business, without being under any Necessity of coming under the Claw of the Vulture; the Judges
of

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of the one Court are (or, at least, are here recommended to be) Men of the highest Birth and Eminency in the County, who serve their Country without any Expectation of Reward, and thereby may be suppos'd to be above any Imputation of committing indirect Practices; but those who preside in the other (over a pack'd and corrupt Jury, of low Consequence,) are generally Professors of Law, not of the highest Denomination; whose chief Advantage arises, not in administering justly, and with Speed, but by puzzling and confounding the Truth, to occasion Delay. And the Increase of Power and Authority here intended, to be added to the inferior and subordinate Magistrates, is not equal to that they are already invested with, tho' in different Respects; for the Legislature being sensible of the great Use of their Judgments, and of their quick and easy Methods of administering the same, is frequently extending their Jurisdiction, so that, by several late

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Penal Statutes, the Justices of the Peace have Power, in a summary Way, to inflict Penalties on Offenders against such Laws, to a much higher Value than what is here propos'd to be submitted to their Determination, relating to private Property.

And if the Ability and Integrity of these Magistrates have no occasion to be arraign'd, in Cases of so great Consequence where the Crown is concern'd, or in several other Branches of very high Importance, as deciding Disputes touching Settlements of the Poor, and others, too numerous for me to descend to Particulars, whose Judgments are so final as never, upon an Appeal to a higher Judicature, to have the Justice of the Sentence call'd in Question, or to be revers'd, unless there appears to be some Defect in the Form of their Proceedings, I can discern no Reason, why the Decision of Property, in the Instance here laid down, might not with as much Safety

ty be committed to them, and much more than in those inferior Courts with whom such Power is now lodg'd. Besides, it must be allowed that the Jurisdiction here propos'd to be given to the inferior Magistrates, is not allotted to them in so extensive a Manner as the Law has already, in other Cases, defined; for, in those Instances before cited, relating to small Tithes under the value of Forty Shillings, or Debts due to the Revenue of the *Post-Office*, under Five Pounds, the Statutes have enabled Two Justices to proceed, in a summary Way, for the Recovery of the same in their private Retirements, giving the Party dissenting from their Judgments an Appeal to the next *Quarter Sessions*, to have the same revis'd and controul'd, if their Proceedings are there found necessary to be corrected; for, by the Provision here made, the Justice of the Peace, when alone, and from his proper Judicature, has no other Power than that of issuing out the first summary Process,

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to warn the Party complain'd against to appear at the next *Quarter-Sessions*, there to answer and defend the Demand made against Him: And if, in the Interim, by the Mediation and powerful Interposition of that Magistrate, the Dispute can't be in an amicable Manner adjusted, then to receive a full and fair Hearing and Determination in that open and excellent Court of Judicature, where there will be such an Assurance of Conveniency, and so favourable a Prospect of obtaining Justice, that, in my Opinion, there is not the least Ground for fear of meeting with a Disappointment in either especially, when, after all this, an Appeal is allow'd to be made to the Highest Court of Law in the Kingdom, as a further Security to keep the subordinate Magistrate within due Bounds, for that Power to cancel and make void their Judgments, if found to be inconsistent with Law and Equity. And, I conceive, it wou'd be as great a Felicity as cou'd befall a *British Subject*

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Subject to have this Proposition comply'd with; which, with my Wishes that the Event may prove so, shall conclude this Twentieth Section.



S E C T. XXI.

From not establisbing yearly Salaries to be paid by the Crown, not only upon all Judges, but all other Officers concern'd in the Administration and Execution of Justice, and restraining them from receivving any other Fee or Profit whatever.

1. **I**T is propos'd, that the Judges, and such other Officers as shall not be found necessary to be suppressed, shall have yearly Sallaries establish'd upon them, to be paid by the Crown; and that neither the Judges,

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nor any of their subordinate Officers, nor any other Officer or Deputy, concern'd in the Administration of Justice, shall receive any other Fee or Profit whatever from the Subject, for any Business transacted by or before them.

2. That the Keepers of the several Prisons of the Kingdom, shall have the like yearly Sallaries establish'd upon them, to be paid by the Treasurer of the County-Stock, to be ascertain'd and rais'd in the same Manner as those of the Masters of the Houses of Correction are now by Law limited, and to receive no other Fee or Profit whatever.

I conceive, that it wou'd not only very much contribute to the Ease and Advantage of the Publick, but as much redound to the Honour of the Government, to provide that Ministers and Officers imploy'd in the Administration of Justice, shou'd be paid at the Expence of the Crown, that there-
by

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by Right might be dispers'd Tax-free to the Subject. For, as it is an approv'd Maxim and standing Rule in all Constitutions, that Justice is neither to be denied to, nor shut up from any, so I shou'd think the same Reason wou'd hold why it ought not to be sold to any, but be the pure Gift of that presiding Guardian who protects those under his Authority in the free and quiet Enjoyment of their Properties, and defends them from Oppression. And surely such an Institution as is here propos'd, wou'd appear with greater Lustre and Advantage to a Government, than the Practice now us'd by the Judges Itinerant thorough the whole Kingdom, to administer Justice, (to whom at that Time is delegated all the Power vested in the sacred Person of Majesty,) or their inferior Officers in their Behalf, of taking Rewards from the Subject for dispatching the Forms necessary to be obtain'd in the Pursuit of Right. I esteem this Method of proceeding to be much
below

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below the Dignity of a Judge, and retracts from that Credit and Respect due to so important an Office. And as this Method of selling Justice looks highly unbecoming in the supreme Officer, so it wou'd be no less convenient to have it suppress'd in those inferior, who being employ'd in expediting the original and judicial Processes of the King's Courts, which run in his Name, and receive his Royal Impression, ought to be treated as his menial Servants, and receive such Recompence, from him alone for their Services, as may be the Effects of his Royal Bounty. And thus wou'd the Vicegerent, in a most eminent Degree, approve himself a tender Nursing Father of his People, in not only being the Author of giving Life and Vigour to Laws made for their Preservation, but, from having so great a Regard to their Ease and Conveniency, in supporting that Weight necessary to be impos'd for the Execution of them. And this Proposition being comply'd with, wou'd
not

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not only alleviate the Expences in passing thorough the Gates of Justice, and produce all the other good Effects already alledg'd, but wou'd also be an effectual Means to add this further happy Consequence, of having Right administer'd with greater Speed; for the Officers, in whose Hands the Execution of Justice were vested, having a settled Allowance from the Crown, in full Satisfaction of all Business done, and not being capable of demanding any other Recompence, cou'd have no Point in View, as now, in prolonging Disputes, in order by those Delays to inhance their own Profits. And certainly no Officers belonging to the Law are more requisite to be redress'd, than those to whom the several Prisons of the Kingdom are committed; for the Extortions exacted, and Severities us'd by them towards those under Confinement, greatly increase that Misfortune, which wou'd at once be prevented, if the Method here prescribed, of their having a Sallary established,

lished, and being excluded from receiving any other Profit, was pursued. The Reasonableness of which I must submit to better Judgment; and shall therefore conclude this Twenty-first Section.



S E C T. XXII.

From the great Scandal to the Constitution in suffering such a Number of free-born Subjects, Insolvent Debtors, to remain in Prison, and there to die, or languish for want of the common Ingredients of Life.

IT is propos'd, that to prevent for the future the Miseries of a long Imprisonment, hitherto suffer'd by *Insolvent Debtors*, and to procure those under that Misfortune their Liberty, upon

upon making to their Creditors the utmost Satisfaction they are capable of, every Prisoner for Debt shall have Power to summon his respective Creditors to appear before the Judges, at the Assizes of the County where he shall be confin'd, there to chuse an Assignee, to whom such Prisoner shall assign all his Estate, both real and personal, (the Tools necessary for his Trade, if any, and the wearing Apparel of himself and Family, excepted, not exceeding in the whole the Value of Ten Pounds,) for the Benefit of his Creditors, and shall deliver into Court, at such Assizes, a true Particular of all such Estate as aforesaid, and make Oath of the Truth thereof.

That if the Majority of the Creditors of such Prisoner, in Number and Value, agree to the Choise of an Assignee, and to the Acceptance of an equal Dividend of his Effects in full of their Debts; the Judges shall immediately order such Prisoner to be discharg'd
from

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which they are not in the least capable of removing: And what is still more extraordinary, that no Provision has ever yet been made, for their necessary Support and Subsistence, when under such a Calamity. Now, if a Parallel be drawn between what is practis'd in this Behalf in a Government bounded by Laws, made by the Subjects themselves, and thereby it might be rationally expected that both their Persons and Properties should be more safe, and that used in other Kingdoms and States entirely arbitrary, it will be found, that in the former no Regard is had to the Miseries and Wants brought upon the Subject by Reason of Confinement; and in the other, all due Precautions taken to prevent such fatal Misfortunes from taking Place: For tho' in other Kingdoms, as well as here, Imprisonment for Debt may be tolerated, yet in all, or, at least, in the most considerable Governments in *Europe*, this reasonable and just Fundamental is establish'd,
That

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That after a Debtor has made an ample Discovery of his State and Condition, and is ready to surrender his whole Substance for the Benefit of his Creditors, he shall not be liable to Confinement, unless a suitable Allowance be provided for his Maintenance; during such an unhappy Abode, at the Expence of those who are the Authors of it. And surely, if it be impartially consider'd, such an Institution is highly reasonable, and ought to be esteem'd worthy of Imitation in any Government, where the Laws have not made so just and excellent a Provision for the Relief of the Subject. For I have always thought, that a Person entirely insolvent, or one exerting his full Strength and Ability to do Justice, tho' not capable of effecting it to the utmost Extent, have a Right to enjoy their Freedom and Liberty, and the Community where they live a no less just Title to demand the Use and Force of their Labours, and to reap the good Effects thereof; which,
by

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by Confinement, they are excluded from affording. And doubtless, the Considerations here alledg'd, have induc'd the Legislature, from Time to Time, to interpose their Power and Influence in the Behalf of those languishing under such Calamities, which has never been extended to so great a Latitude, nor render'd of that universal Benefit to the Subject, that the Nature and Circumstances of the Concern would have admitted of: For all the Acts hitherto pass'd for the Relief of Insolvent Debtors, have been restrain'd to Debts under the Value of an inferior Sum; by which Limitation it always happens, that great Numbers under Confinement have receiv'd no Benefit from the Grace and Indulgence of the Legislative Power, who were under as pressing Difficulties, and as great Objects of Compassion, as those who have prov'd their Discharge by Virtue of such Laws. And for my own Part, I can discern no Reason why the large or small Value of the

M

Debt

Debt ought in Justice, to occasion any Difference in a general and equal Participation of the same: For if any Party imprisoned, condescends to make all those sacred Asseverations imposed by the Laws, before recited, for a true Discovery of his Effects, and willingly appropriates the same, in Obedience thereto, to such Uses as are therein prescrib'd; I conceive a Debt of One Pound, or One Million, should be deem'd of the same Importance, with regard to the Relief design'd to be afforded by such publick spirited Acts of the Legislature; or, if any Distinction be made between them, the same ought rather to be in Favour than Prejudice of the latter; for the larger the Debt is, the more impossible, or at least improbable will it appear, that a Person, then entirely insolvent, should ever be in a Capacity to discharge the same; and then, of course, should be set at Liberty to exercise his Faculties for his own and the general Advantage of

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of the Community to which he belongs.

Now, whether this Proposition may be esteem'd reasonable, and to add Lustre to a Government, calculated above all others for abounding with Liberty, must be submitted; which shall conclude this Twenty-second Section.



S E C T. XXIII.

From the Expensive and Voluminous Method of Conveyancing.

IT is propos'd, that for effectually reducing Conveyances within a reasonable Brevity, all Conveyances where by any Lands or Hereditaments shall pass, or be any way affected, shall be by one Deed enrolled; which shall contain only the Date of such Deed,

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with the Names, Additions, and Places of Abode of the Parties to the same, the Parcels of Lands and Hereditaments convey'd, without the Addition of any other Clauses or Covenants whatever: And that every such Deed shall be by the Grantor or Grantors in the same acknowledg'd before a Justice of the Peace of the County where the Lands convey'd, or some Part thereof, shall lie, and afterwards inroll'd in the proper Register-Office to be establish'd, as hereafter is propos'd.

The Form of the Deed.

T *HIS Indenture, made the Tenth Day of March, in the Thirteenth Year of the Reign of our Sovereign Lord GEORGE, by the Grace of God, of Great Britain, France, and Ireland, King, Defen-*

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der of the Faith, Anno. Dom.
1726. between A. B. of C. in
the County of D. Yeoman, of the
one Part, and E. F. of G. in
the said County, Yeoman, of the
other Part; Witnesseth, That
the said A. B. for and in Consi-
deration of the Sum of
Pounds, of lawful Money of
Great Britain, to him in Hand
paid by the said E. F. before the
Execution of these Presents,
the Receipt whereof the said
A. B. doth hereby acknowledge,
bath by these Presents, bargain'd
and sold unto the said E. F. all
the Manor of H. in the said
County of D. and all the Mes-
suages, Lands, Tenements, and
Hereditaments of him the said

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A. B. situate and being within the said Manor, and all Houses, Edifices, Rights, and Appurtenances, whatever, to the said Manor appertaining; To have and to hold the said Manor, Lands, and Hereditaments, with every of their Appurtenances, unto the said E. F. his Heirs and Assigns, for ever. In Witness whereof, the Parties to these Presents, have interchangeably set their Hands and Hands and Seals, the Day and Year above written.

Seal'd and deliver'd
in the Presence of

A. B.

Acknow-

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Acknowledg'd by A. B. Grantee, in the within-written Deed, the Tenth Day of April, 1726.

Coram

J. D.

Uno Justic. Pac. &c.

If the Method of conveyancing was reduc'd to the ancient Brevity, it wou'd greatly contribute to the Ease and conveniency of the Subject, in freeing them from the needless Expences they are oblig'd to be at, by the present tedious and voluminous Manner of proceeding, and as effectually answer every End that can possibly be propos'd by the other, except that of encreasing the Profits of the Law-Professors. For, if Recourse be had to a Purchase-Deed, Settlement, or any other Instrument, by which Lands and Hereditaments

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were either alienated or settled, of the Date of One Hundred Years ago, or more, that which was, for Brevity at that Time, capable of being contain'd almost within the Compass of a *Horn-Book*, wou'd now fill and loaden a Wheel-Barrow of common Size. This Deviation from the ancient and concise Method of transferring Property, must derive its Source from an Effect of Law-Craft, rather than that of real Necessity; for I am not under the least Difficulty of believing, that there is no such Difference between the Dispositions and Tempers of those existing in the present Age, and those of Time past, but that the Dealings and Contracts of the one cou'd, with as much Safety, be compriz'd within that narrow and convenient Compass prescrib'd and us'd by the other, if those thorough whose Hands the Execution of the same do pass, and whose Profits may be thought to increase or diminish by the Length or Brevity of such Instruments, had no other Reflexion

in

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in view than that of more effectually securing the Property transferr'd, by pursuing so voluminous and troublesome a Method. And, if no regard was had to the Conveniency of the Subject, by suppressing a Practice inconsistent with that Principle, and introducing one more commodious and less oppressive, yet, I conceive, if a Consideration be only had to that of establishing Property on a more sure and lasting Foundation, the same can't be so effectually brought about in Terms prolix and voluminous, as in these concise and comprehensive: And this Assertion wou'd not only answer in this Particular, but is approv'd as authentick in all other Intercourses of human Life: As, for Instance, the Excellency of Language consists in delivering the Thoughts in a Style short and nervous; Commerce never so regularly manag'd, nor appearing so plain and explanatory, as when the Mercantile Accounts are abridg'd into a small Volume; and whatever else is negotiated

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negotiated, makes a deeper Impression on the Mind and better retain'd in the Memory, when the utmost Brevity is made use of. Now, how the Superfluity of Words, always inserted in the granting Part of Conveyance, can be made appear to be necessary or reconcil'd to Reason, I'm somewhat at a Loss to define, which are, Granted, Bargained, Sold, Aliened, Enfeoffed, Ratified, and Confirm'd; for certainly the Words Bargain'd and Sold, or the last Word alone, wou'd more effectually express the Grantor's Intention of parting with a Property, than such a the Multiplicity of them centring all in same Point, and importing materially the same Signification; which makes it appear, that the Use of so many Words can be only calculated for one to confound the other, that thereby Disputes may arise, or that additional Instruments must necessarily be made to rectify Mistakes and supply Defects, and by such Proceedings it may be easily conceiv'd who only receive Advantage.

vantage. Whether the Innovation here propos'd may be esteem'd reasonable, or not, must be submitted; which shall conclude this Twenty-third Section.



S E C T. XXIV.

From the expensive Practice of levying Fines, the Use of which might be more effectually answer'd by no such oppressive Method to the Subject.

IT is propos'd, that to prevent the unnecessary Expences hitherto impos'd on the Subject in levying Fines to assure Titles to real Estates, a publick Acknowledgment of a Deed, to be inrolled as prescrib'd in the foregoing Section, by a Feme-Cov'rt in open Court at the *Affizes, Grand-Sessions, or Quarter-Sessions* of the Peace of the County

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County, in which some Part of the Lands contain'd in such Deed shall lie, and the same to be indors'd upon the Deed, and subscrib'd by the Clerk of the *Affizes*, or *Grand-Sessions*, or Clerk of the Peace, as the Case may happen, (for which One Shilling shall be paid, and no more;) shall convey the Interests of such Married Women, arising either from their Title to Jointure, Dower, or otherwise, as effectually to all Intents and Purposes as hitherto done by a Fine.

The Form of the Acknowledgment.

Acknowledg'd by M. B. *Wife* of A. B. *Grantee* in the within-written Deed, to be of her free and voluntary Consent in open Court at the General Quarter-Sessions of the Peace, (or at the *Affizes*, as the Case may happen)

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pen,) held at E. for the said
County of D. the tenth Day of
July, 1726.

J. T. Clerk of the Peace

I am apprized, that a Fine operates in a double Capacity, in being the only Method by which a Feme-Covert can convey and pass away her Interest in Lands and Hereditaments, as also the Power, by Law annex'd to it, of barring Estates Tail in the Lineal Descent, exclusive of Collateral Remainders. But as Provision is propos'd to be made in the next succeeding Section, relating to Estates Tail, I shall in this only treat of the Reasonableness of what I propose to introduce instead of the former: I must really commend the Prudence, as well as Justice, of the Law in providing for the Safety and Protection of those who might otherwise suffer by the want of it; for the Law supposing that as a
Wife

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Wife is under the Power and Influence of her Husband, and may thereby be prevail'd upon or menanc'd to enter into Measures, if allow'd to be secretly transacted, contrary to her Interest, so to prevent any Injustice being done in this Behalf, whenever any Property belonging to such a Party is to be concluded, a publick Examination was intended to be requir'd, and Confession made, by a Married Woman in open Court where such Fine is levied, that such Consent is not occasioned by the Effects of Compulsion or Fear, but proceeds from a voluntary Disposition; and that the same may be deriv'd down to Posterity by the strongest Testimony, a Record is made thereof, to which all the Judges of the Court are made Parties, after all the publick Solemnity had, that cou'd possibly be foreseen to be necessary, in order to prevent any indirect Practices from being committed in Cases of this Nature. And tho' this Institution was originally well design'd,
yet

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yet the same has, by the common Practice always used in levying Fines, been carry'd on in a Method so different from the first prudent and safe Provision, and so liable to Corruption, that all the good Effects propos'd to be obtain'd from it may be easily diverted from taking place, and the whole render'd abortive; for instead of the Party's (in whose Behalf all these Precautions were intended to be taken) being Publickly examin'd in the proper Court, or before one of the Judges of it, a Fine is generally acknowledg'd before a Commissioner appointed by a Writ of *Dedimus Patef-tatem*; who is usually a Person of no greater Credit, or Authority than the Attorney imploy'd in suing out such Fine; by which Method of Proceeding, there is room for any indirect Practice to be secretly and clandestinely acted; and no greater Security can be expected from such an Acknowledgment, than from the bare Execution of a Deed. But that I may inforce
the

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the Reasonableness of the easy and convenient Method I propose to introduce, in lieu of that expensive and troublesome one now practis'd, I conceive, that if the Manner of passing a Fine was perform'd as strictly, and all the Solemnity had in executing the same as the first Institution design'd, yet what is here propos'd to be effected at the Expence of One Shilling, cou'd not fail of producing all the good Effects that are, in any Respects to be attain'd by the present tedious and highly oppressive Method, with regard to the Charges attending it.

For if a Married Woman was to make a publick Acknowledgment in open Court at the *Affizes* or *Quarter-Sessions*, as here propos'd, I can discern no Reason why that wou'd not answer as effectually, to all Intents and Purposes, as if acknowleg'd in the Common Pleas; and if the Deed, by which such Married Woman's Interest is convey'd, was to be inrolled in the Register-Office, where the same wou'd be deriv'd

deriv'd down to Posterity in the most clear and explanatory Terms, why such a Record shou'd not be deem'd as sufficient as a Fine, I'm sure the one can't come in any Degree of Comparison with the other, for Ease and Conveniency to the Subject, which ought to be a Consideration of no small Importance. For I have always thought that no Impositions or Taxes, laid upon the Subject, by Force of the Legislative Power, are more inconvenient or oppressive to them, than the Expences attending Fines and Recoveries to assure Titles to Real Estates, which they are oblig'd to do almost upon every Alienation.

If these are Grievances they ought to be redress'd; and whether the Expedient here propos'd should answer in that Capacity, must be submitted; which shall conclude this Twenty-fourth Section.



S E C T. XXV.

From the ridiculous Custom of suffering common Recoveries; which the Usage of no other Country can warrant, or any Reason support.

IT is propos'd, that to prevent any Occasion of levying Fines, or suffering Recoveries, both which shall be abolish'd to bar Estates Tail, all Estates, whether granted or devised, shall be capable of being limited or settled in no other Manner than either for the Life, or Lives of those respectively, who shall be living at the Time of such Grant or Devise made, or otherwise, to them absolutely in Fee-Simple.

I conceive, this Fundamental in our Law was first establish'd (if I
am

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am not greatly mistaken in Chronology) in the Reign of *Edward* the Fourth; and how such a Proceeding, not attended with the least Colour of Reason could ever take Place, or could so long subsist, is a Matter that can hardly be accounted for. I think the Law-Books term the suffering of a Recovery to be the genteel Method, or artful Contrivance of getting a Tenant in Tail into the actual Possession of an Estate in Fee-Simple. And the Men learned in the Law in those Days may, in all likelihood, be very much applauded by those of the same Profession in ours, for their great Dexterity in contriving this Expedient, which occasions so great Advantage to them, at the Expence and Oppression of the Subject in general; and no less to the Blemish of any Government that suffers a Practice so entirely void of the least Foundation of Reason to subsist. For whoever will impartially consider the Nature, and true Import of all this feign'd Matter,

and the monstrous Jargon us'd in carrying on the same ; by which a pretended Demandant recovers Judgment against the Tenant to the Precipe, he against the Tenant in Tail, and he against the common Vouchee, (a suppos'd Emperor in the Moon,) can never judge of the Solidity and Wisdom that the *British* Nation is famed for, by the Allowance of such an idle and supercilious Proceeding, to have any Place in the Body of their Laws. And I do not only highly enveigh against the ridiculous and expensive Method of barring Estates Tail by a common Recovery, but also against the Limitation of an Estate in such a Manner, as in no respect answering the Intention of preserving an Estate from being destroy'd; for I should esteem it most reasonable, that when a Grantor, or Devisor of Lands, is desirous to have any Party, or Parties, to whom the same is limited, restrain'd from incumbring or alienating such Hereditaments, the only effectual Way to prevent

prevent such a Design from being defeated, is to make the Grantees or Devisees Tenants for Life. I would not be understood, when I am endeavouring to promote Tenants for Life, in all Cases, instead of those in Tail, to favour in the least Perpetuities; for I have always approv'd, and applauded the Wisdom and Sagacity of the Common Law in providing against them; which if allow'd, would be highly detrimental to the Increase of Trade, as well as to the Incouragement of Industry, and Growth of Arts and Sciences, and therefore, should by no Means be suffer'd, in a Kingdom thriving in the one, and daily improving in the other: But I should much approve to have establish'd a Medium between the two Extreams; for as I esteem it extreamly wrong, to have Estates perpetuated in Families, so it is no less so, to have Limitations, that were made with a View of preventing the Person, on whom the same are settled,

from defeating them in his Time, by a feign'd Trick or Stratagem, (for so a Recovery must be term'd,) to be unhing'd all at once, and thereby be at large Expences to make that void which was prudently intended to be preserv'd. But when it shall be found necessary, as too frequently happens, that from the ill Conduct and Extravagancy of a Person to whom an Inheritance will legally descend, or to whom one may be intended to be given, the Ancestor or Benefactor should restrain him within due Bounds, who, if left at large, might ruin both himself and Posterity: Let such a one have an Estate for Life only, by which he can waste no more than the yearly Profits: Or, in the other Instance, let a pure Inheritance descend or be given absolutely in Fee-Simple, when no Objections can be justly rais'd against the Party design'd to succeed thereto, for not intrusting an Estate entirely to his Management, and free Disposition.

But

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But I can neither discern the least Reason for, or Use in creating an Estate Tail, which can continue no longer in Force, than till a Fine shall be paid to the Crown for leave to alienate, and other Measures from thence taken, can be past and concluded. But however reasonable the Innovation here propos'd may be, yet the Profits arising by Fines and Recoveries are such considerable Articles to the Law-driving Party, that I make myself sure, (whoever else may have Virtue enough to wish Success to what may be for the general Ease of their Country) the same will have no favourable Reception with them; with which Observation, I shall conclude this Twenty-fifth Section.



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S E C T.



S E C T. XXVI.

From not allowing Writs of Habeas Corpus (which is the brightest Article of Liberty in the British Constitution) to be the pure Gift of the Crown, and made out to the Subject without Fee or Reward: And from not abolishing the Practice of suing out Writs of Dedimus Potestatem, to take Answers to Bills filed in Equity; and to administer the respective Oaths to Sheriffs, Justices of the Peace, and other Officers; which might be as effectually perform'd by no such expensive Method.

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I. **I**T is propos'd, that Subjects of all Degrees and Conditions may receive equal Advantage of that which was establish'd for the general Security and Ease of the Subject, upon Application to be made for a Writ of *Habeas Corpus*, by any Person entitled by Virtue of the Statute in that Behalf made, no Fee or Reward whatsoever shall be demanded or taken for the making out, signing, and sealing such Writ, but shall be the pure Gift of the Crown to each Subject.

II. That to prevent the unnecessary Expences in suing out Writs of *Dedimus Potestatem*, to swear Defendants Answers to Bills fill'd in the Courts of Equity, the Justices of the Peace, within their respective Jurisdictions, shall have Power to swear such Defendants in like Manner, for the same Fee, and that the Masters in *Chancery* in Ordinary are empower'd to do in such Cases.

III. That

III. That to prevent the like Writs being sued out to administer the respective Oaths of Office to Sheriffs, Justices of the Peace, and other Officers; that all the different Forms of such respective Oaths shall be ingrossed on separate Rolls, and kept amongst the Records of the *Quarter Sessions*: And every Magistrate, and other Officer, before they shall enter upon the Execution of their Office, shall respectively take the usual Oaths at the *Quarter-Sessions* belonging to the Place where they commonly reside; for taking which the Clerk of the Peace shall receive of each Person one Shilling, and no more, and shall return, into the proper superior Court at *Westminster* true Duplicates of the said Rolls, within twenty Days after each *Quarter-Sessions*; which easy and convenient Method of administering the respective Oaths to all Officers, shall be as effectual, to all Intents and Purposes, as if taken by a Writ of *Dedimus Potestatem*, as hitherto usual.

I conceive,

I conceive, that if this Proposition of having Writs of *Habeas Corpus* conferr'd *gratis* on the Subject, was comply'd with, it would highly add to the Lustre of that excellent Law that provided the same for the securing their Liberty; which before, the making thereof, was expos'd to the greatest Dangers. And as this Law was calculated for the Advancement of a general Good, and that Subjects of all Degrees and Conditions, should receive equal Benefit by its Influence, when their Liberties should be invaded, so the same must be within the Power and Reach of every Person entitled to and seeking Redress from it; otherwise, the Design of such an admirable Institution can't be render'd universal and compleat: For if a Person be restrain'd of his Liberty, by an Imprisonment illegally inflicted, and by reason of his Poverty is incapable of defraying the Expences of a Writ of *Habeas Corpus*, to obtain a Deliverance
from

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from such an unjust Confinement, such a Provision is only nominal, and of no real Use or Signification to a Party attended with these Difficulties. And the good Consequences that will attend such an Indulgence granted to the Subject, will be too weighty to suffer any Reflection of Charge to the Government, to come in Competition with such publick Bounty and Munificence.

Now, as to the second Proposition, I conceive it wou'd save great Expences, and be no less convenient, if the Justices of the Peace, within their respective Jurisdictions, had Power to swear Defendants to their Answers put in to Bills filed in the Courts of Equity; which might be more effectually done for the Charge of one Shilling, than by the present Method. For, the Suitors being now oblig'd to sue out a *Dedimus*, to swear the Answers, and the Persons thereby appointed to take the same, being generally the Attorney im-

ploy'd

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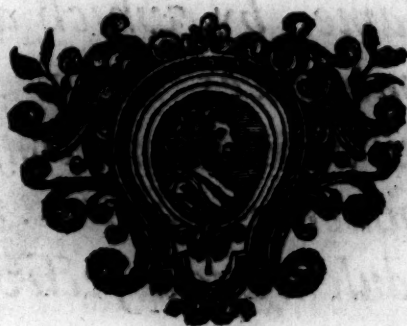
ploy'd in the Cause, (who for the most Part are not reputed to be Men of the strictest Virtue, and nicest Characters for upright Dealing,) they may have an Opportunity of carrying on Proceedings clandestinely, and thereby connive at a fair Administration of the Oath; which would certainly be avoided, and the same taken in the most open and easy Manner, by the convenient Situation of the Justices of the Peace over all the Kingdom, who are already intrusted with Matters of much higher Consequence, to be suspected of any undue Practices in that which is intrusted with Persons of much inferior Rank.

Now, as to the third Proposition, I conceive, that the Method now us'd, for administering the Oaths to Ministerial Officers and those Judicial, is attended with great Trouble and Expences, and might as effectually, and with much more Ease and Convenience, be taken at the *Quarter-Sessions* in the Manner before prescrib'd. For I apprehend

apprehend that the first Institution of a Writ of *Dedimus* might be form'd from this Foundation, That such Writs after Service of the same are return'd into the Court from whence they issue, there to be kept on Record, by which it may appear, and be deriv'd down to the latest Times, that Officers employ'd in the Execution of such Trusts had taken the Oaths by Law appertaining to their respective Offices, before they enter'd upon them; all which wou'd much more regularly appear upon Record, if the Method here prescrib'd was comply'd with, of inabling all Officers whatever, to take the Oaths at the *Quarter-Sessions*, and correct Duplicates of the Rolls were return'd by the Clerks of the Peace into the proper Office, to be there kept as perpetual Testimony of such Proceedings. And since the Officers of Sheriffs and Justices of the Peace are troublesome, highly necessary for the Execution of Justice, and for the Preservation of the publick Peace; but attended rather

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with Loss than Advantage to those who are intrusted with such Commissions, the most easy Method that cou'd be concerted for their Qualification and Admission into the same, shou'd be pursued: And whether what is here offer'd may be esteem'd reasonable must be submitted; which shall conclude this Twenty-sixth Section.



SECT.



S E C T. XXVII.

From the Want of a General Register of the Kingdom, there to record all Securities whatever, affecting any Lands and Hereditaments within the same, by which all prior Incumbrances might at first View appear, and consequently numerous Suits touching fraudulent and defective Titles be prevented.

IT is propos'd, that a General Register Office to be establish'd and kept in the City of *Westminster*, for all the Kingdom of *South-Britain*, in which all Mortgages and other Settlements, of what Nature or Kind soever, affecting

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fecting any Lands or Hereditaments within the same, shall be register'd, and that no other Security than a Deed indented and register'd shall affect Lands.

That other Register-Offices shall be kept in different Parts of the Kingdom, either one in each Circuit, or otherwise, as shall be thought most conducive to the Ease of Convenience of the Subject, from which Transcripts or Duplicates of all Deeds register'd shall be transmitted to the said General Register-Office of the Kingdom, as also Transcripts and Duplicates of all Deeds register'd in the said General Register-Office, shall be transmitted, from thence, to every of the other Register-Offices in whose respective Jurisdiction the Lands shall lie.

I conceive, nothing is more wanted, nor wou'd conduce more to the publick Good of the Kingdom, than a General Register; and it seems a little inconsistent that the Kingdoms of Scot-

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land

land and Ireland shou'd have this Privilege, and that this Kingdom (to which the other two are only subordinate, and have an entire Dependency upon) shou'd not, before this Time, have so much consider'd the Security and Advantage of the Subject, as to have made the same necessary Establishment. The good Consequences that wou'd attend such a Provision are too numerous to be repeated, and are obvious at first View; for, by the means of a Register, the several Dealings and Negotiation of Mankind wou'd appear upon Record, which wou'd effectually prevent the Fraud and corrupt Practices hitherto us'd, as well as great Damages sustain'd, in selling or mortgaging Estates affected with prior Incumbrances. From whence it wou'd naturally follow, that Persons might purchase Land, or lend upon Mortgage safely, dispose of their Children in Marriage, and in all other Commerce and Dealings, by which the Landed Interest of the Kingdom wou'd be engaged,

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engaged with undeniable and indisputable Security. It would have this further good Effect, in the preventing the Continuance of a Grievance, which highly wants Redress, which is the voluminous and expensive Method of Conveyances; for all Deeds affecting Land being to be inroll'd, and to contain no more than the Names of the of the Parties, and Parcels alienated or engag'd, the ancient Method would be reviv'd, and drawn into as narrow a Compass as formerly, exclusive of all those needless Covenants and Recitals now us'd, which could not be originally calculated, nor at present practised, for any other End than that of enhancing the Profits of the Law Profession. It would prevent the future Growth of unnecessary Scribbling and Clerkship, by which one Clerk would dispatch as much Business as Ten now do, and a great Number of those superfluous Under-strappers and Pettifoggers would be disbanded from such Service, and be oblig'd to undertake some other Im-

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ployment more useful to the Publick, and consequently, less oppressive to their Fellow-Subjects. But the Benefit, superior to all other Considerations, that would accrue to the Subject by having this Proposition of a General Register comply'd with, would be the effectual Prevention of expensive and tedious Controversies in the Courts of Equity, relating to fraudulent Titles, which are the chief Branches of Business now presiding in those Courts; and which do not only constantly occasion in the Determination such Delays, as to defeat the Party justly entitled from the Possession and free Enjoyment of such Property in any reasonable Period of Time, but, if the same is not of considerable Value, the whole is too frequently wasted and devour'd in the Dispute; which will prevent Right, tho' justly administer'd, from taking Place in any Degree. I should think, and not without a solid Foundation of Reason, that the great Security, as well as Ease

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Ease and Conveniency, that would attend such an Institution, might be more than sufficient to controul and over-balance any Opposition, that may be made against the same, by the Prejudice it may occasion to private Capacities. And I hope I may assert, without incurring the Penalty of being mistaken, that there is still left so much Virtue in that August and Overruling Power, only capable of affording effectual Redress of all our Grievances, as not to suffer any private Inconveniency to come in Competition with, or, in the least, to impede the Prosecution of that which will tend to a National Advantage. By the Proposition here offer'd to be introduc'd, the Profession of the Law must naturally be impair'd in the most capital Branches of it, and consequently, this Work will be censur'd, as well as all other Attempts that may contribute thereto, oppos'd by that Body affected thereby. For if the several Dealings of Mankind are laid

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open, and made perspicuous, so as that Fraud in the same must unavoidably be prevented, the Foundation for Disputes must in a Manner be taken away; which effectually proves what I have before asserted. But whether, this Proposition may meet with Success, or not, or whether, if otherwise, this Author has describ'd the right Method by which the same may be effected, must be submitted; which shall conclude this Twenty-seventh Section.



SECT.



S E C T. XXVIII.

From the numerous and superfluous Offices belonging to the Courts of Common Law and Equity, which occasion Confusion in Business by passing through so many various Channels, as well as Delay and Expences.

IT is propos'd, that instead of the numerous Offices now subsisting in the superior Courts of the Kingdom, the Offices following be only establish'd and kept in proper Apartments, in *Westminster-Hall*, near the respective Courts of Judicature, to which they belong, and the Residue suppress'd and abolish'd.

In *CHANCERY*.

A Register, to draw up and sign the interlocutory Orders, final Decrees, and Injunctions, of that Court.

A Clerk of the Crown, to engross all Charters, Patents, and other Instruments, whatever, that may pass the Great Seal of the Kingdom; and to be accountable to the Crown for all Fees and Profits due for the same.

In the *KING's BENCH*.

A Prothonotary, or General Officer, to draw up the Rules, and sign all the Judicial Process issuing out of that Court.

A Clerk of the Crown, to dispatch all Criminal Prosecutions.

In

In the **COMMON PLEAS,**

A Prothonotary, or General Officer, to draw up the Rules, and sign all the Judicial Proceſs iſſuing out of that Court.

A General Keeper of the Law-Records of the Kingdom, who ſhall ſign and enter, before Service thereof, all original Proceſs which ſhall iſſue out of the Superior Courts; and after the Execution of the ſame, all Original and Judicial Proceedings ſhall be brought into the ſaid Office, to be kept at *Westminſter*, and there to remain on Record, in Order and Method as the ſame ſhall be reſpectively enter'd.

A General Register of the Kingdom, to be kept at *Westminſter*, into which Office ſhall be tranſmitted by the other reſpective Register-Offices, (propos'd to be eſtabliſh'd in different Parts of the Kingdom, for the greater Eaſe and Conveniency of
of

of the Subject) within twenty Days after the End of every Term, Duplicates of all Deeds and Instruments, whatever, affecting any Lands and Hereditaments within the Kingdom, and register'd in such other Office, there to remain on Record, for the Benefit and Inspection of the whole Kingdom, in Order and Method as the same shall be respectively register'd.

And as the numerous Offices, now in the Courts of Equity and Law, are propos'd to be reduc'd to the small Number above prescrib'd, so by pursuing the several Methods in this Essay laid down, all the Offices propos'd to be abolish'd would naturally cease to be useful, and thereby become necessary to be suppress'd, as may appear by the following Proof, viz.

In

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IN CHANCERY.

If the respective Attorneys employ'd were to make out all original Process would cease on Course,	Offices. Subpœna Office.
---	-----------------------------

If the Clerk of the Crown was to dispatch and account for all Instruments passing the Great Seal,	Prothonotary, Hanaper, Petty-Bag, Clerk of Patents.
---	--

If all Fines and Recoveries were abolish'd,	Curfitors in a great measure, Alienation.
---	---

If a General Keeper of the Law-Records of the Kingdom was appointed,	Six Clerks.
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If

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Offices.

*If a General Register of
the Kingdom was ap- pointed,*

Inrollment.

*If all Witnesses, necessary
to be examin'd after
Publication, were ex-
amin'd before a Master
in Ordinary, or Extra-
ordinary, or viva voce,*

Examiners.

*If original Affidavits were
read without filing.*

Affidavit.

*As the Cash of the Suitors
is now by Act of Parlia-
ment wisely vested with
the Bank of England,*

*Ushers of the
Rolls.*

In the KING'S BENCH.

*If all special Bail was
taken away, and none
to be arrested by a
Capias,*

Filazers.

If

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Offices.

If all special Pleadings at Law were suppress'd, | Clerk of Papers
on Plea Side.

If a General Register, of the Kingdom was appointed, | Clerk of War-
rants.

If a General Keeper of the Law-Records of the Kingdom was appointed, | Custos Brevi-
um.

If all Outlawries were abolish'd, | Clerk of the
Outlawries,
Exigenters.

If one Prothonotary was to dispatch all the Rules of the Court, and inspect the making up the Records, in order for Tryal, | Clerk of Rules,
and Clerks of
Treasury in
all Courts.

If Appeals were had at Common Law in the Manner herein prescrib'd. | Clerks of Er-
rors in all
Courts.

In

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In the COMMON PLEAS.

Offices.

<i>If one Prothonotary was to dispatch all the Rules of the Court,</i>	<i>Second and third Protho- notaries.</i>
--	---

<i>If all Fines, and Recove- ries were abolish'd,</i>	<i>Chiragrapber, Register of Fines, Clerk of Proclama- tions, Clerk of Inrollments, of Fines and Recoveries, King's Sil- ver Office.</i>
---	--

<i>If a General Keeper of the Law Records of the Kingdom was appointed.</i>	<i>Custos Brevi- um.</i>
---	------------------------------

<i>If all special Bail was taken away, and none to be arrested by a Capias.</i>	<i>Filazers.</i>
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If

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If a General Register of Clerk of War-
the Kingdom was ap- rants.
pointed,

If all Outlawries were Clerk of Out-
suppress'd. lawries, Ex-
igenters.

I conceive nothing contributes more to the making the Execution of the Law both delatory and expensive, than the numerous Offices in the superior Courts of the Kingdom, thorough which the Suitors are obliged to pass in the Pursuit of Justice. And whatever Endeavours have hitherto been made in order for any Amendment, have always made the Suppression of a great Number of superfluous Offices, to be a chief Fundamental Article for redressing the Grievances of our Laws. And certainly there is an unanswerable Reason to be given, why the Abolition of Offices in the Courts, would be of great Service in making Justice flow
3 with

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with greater Ease and Speed to the Subject, which is, that if the Offices, thorough which the Suitor has hitherto been obliged to pass, were reduced from Ten to One, nothing is more obvious than that thereby nine Parts in ten of the Time spent, as well as of the Expences, would be sav'd: And not only so, but the more concise and compact any Affair is contracted, the same is rendered more easy to all Parties, and less liable to Errors than when in a Method more prolix and voluminous. I am appriz'd, that this Innovation here proposed would vacate a great Number of advantageous Offices, though oppressive to the Subject, and disband a Multitude of useless Limbs of the Law, who may pretend a Right to the Enjoyment of the Offices they may have purchased without any Interruption upon that Account: And, therefore, the Subject must be pillag'd, and any Method diverted from taking place, whereby Relief would be granted, in order that the Offices that

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are really Barriers in the Road to Justice, may be upheld to pay the Purchasers of such Offices Interest for their Money. This may be the Foundation of the Arguments of the Parties concerned in these Cases, but can be no Weight, I should apprehend, with that *August* Legislative Power that are intrusted with an original and uncontrollable Jurisdiction, to be by them exerted seasonably, according to proper Exigencies, for the Good of their Country. But, if the Legislature should esteem it reasonable to shew Favour and Indulgence to a Number of Reptiles, that are the Scum and Refuse of Nature, and not to suppress the Offices they are in possession of, and which ought not to have been made Merchandize of, by being bought and sold, without repaying them their Prime Cost, there may be Ways and Means enough found out to raise a Fund sufficient to buy in all the superfluous Offices in the superior Courts; which might be done either by a Tax
P upon

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upon the Law-Practicers, and thereby only a Part of the Community would be affected ; or, if a general Tax upon the whole Kingdom was laid to compleat a Work that would be of so universal a Benefit, it would be more generally better received than that which is now in Force, to repay the Subject what a Sect of Vermine robb'd them of, and applied to infamous Uses. For, in the first Instance, the Burthen laid upon the Nation is only to repay a Part, what they have been defrauded of ; but, in the other, a general Advantage would accrue to the People, and in a most valuable Branch, by rend'ring the Administration of Justice more easy and less delatory. But whether the Proposition here laid down may meet with Success, or not, by the great Opposition that may be made against it, by that heavy Body whom it may mostly affect, must be referr'd and submitted till the Event has happened, (which certainly, with Regard to a Publick
Good

Good, ought to be carried in the Affirmative;) which shall conclude this Twenty-eighth Section.



S E C T. XXIX.

From not lessening and ascertaining the Fees of all the Practicers of the Law, and limiting the Number, and better regulating the Practice of those upright Dealers and worthy Patriots, called, Attorneys at Law.

I. **I**T is propos'd, that the Fees of all Serjeants, Barristers, and Attorneys at Law, shall be made much less than those exorbitant and extorsive Fees they now respectively re-

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ceive ; and to be ascertained by Act of Parliament, for all the different Kinds of Business transacted by them, whether in Courts of Judicature, or elsewhere, and not to be exceeded upon strict Penalties,

II. That the Number of Attorneys now practicing shall be lessen'd ; and, for the future, limited to such a reasonable Number, as may be sufficient to dispatch the necessary Business of each respective County of the Kingdom : And that none shall be admitted to Practice, but such as shall be licenced under the Seals of the respective Courts of King's-Bench, Common-Pleas, and Exchequer ; and shall, before such Licence granted, produce a Certificate under the Hands of the Justices of the Peace, or the major Part of them, assembled at the Quarter-Sessions of the Place where such Person to be licenced shall inhabit, of his Reputation and Character, and of his

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his having serv'd a Clerkship of seven Years to some licenced Attorney.

As to the first, I conceive that the selling Justice at so dear a Rate as is now practiced, is a great Oppression to the Subjects, and a Discouragement to the Recovery of Property they may be justly intitled to, and that nothing contributes so much to the Maintenance of this great Grievance, as the exorbitant Fees that the several Law-Practicers are allowed to take. By these Means it too frequently happens, that the Matter contended for is devour'd and swallow'd up in the Expences, occasion'd by the Delays attending the Dispute, and none receives any Advantage thereby but the Limbs of the Law, who were originally instituted, and ought so now to be continued, as proper Agents to procure Right to the Injured, and not to engross and divide amongst themselves as Plunder the Substance and Marrow of the Cause in which they are retain'd

P 3

tain'd. If this is a Grievance (as I conceive it will hardly meet with any Opposition to the contrary) no Power, except the irresistible Force of the Legislature, can be sufficient to afford effectual Redress, which can never be accomplished unless promoted by some publick-spirited Chiefs, who have not only Zeal for their Country, but Weight in themselves to bring the same to Perfection. And considering how slow and indolent all Attempts in general for such a National Advantage are, and what strong Opposition will be made against what is here recommended by that heavy and oppressive Body that such a Reformation would affect, it will require, I conceive, as much of a true Patriot as can now be found existing, to make so excellent an Undertaking have its desired Event.

As to the second, it is evident, beyond all Contradiction, that no Profession or Sect of Men in this our Government are, in any Degree, so pernicious

icious to the Repose of the Subject in general, or destructive to the publick Peace as the Law-driving Brigade. The whole Party is much too numerous, as well as Corrupt, and ought to be reduced, and the remaining Part restrained within such strict Bounds, as might both reform their wicked Practices, and lessen their exorbitant Gains. And, in my humble Opinion, the Diminution of the present Number, and the establishing the same, so as that the Number, once fixed, shall not hereafter be exceeded, is full as expedient and necessary a Regulation, as that of lessening their Fees and reforming their corrupt Proceedings: For any Sect or Fraternity of Men, in themselves corrupt and needful of Amendment, the more numerous and diffused in a Government, the more capable are they of spreading their Infection, and of doing Harm in a Community.

But, by the Method here propos'd (and if this Author had Force equal

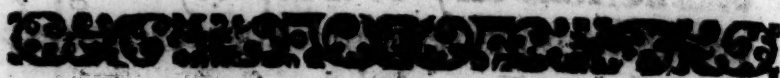
to Inclination, the same shou'd certainly be comply'd with) of lessening the Numbers of the Law-Practicers, and preventing the future unnecessary Growth of the same; the Numbers will be ascertained, and thereby, the Practice of the Law intrusted with a few; and by having none admitted into the same, but those who had serv'd a Clerkship, and produc'd an Authentick Certificate from the Neighbouring Magistracy of their Life and Conversation, as before describ'd, Persons of Character cou'd only be admitted into the Practice, and Multitudes of such as now profess that Science wou'd be excluded, who disgrace the same, as well as impoverish the Subject, by corrupt and vile Actions, to confound the Truth and prolong the Execution of Justice, with no other Motive than to increase their own Profits by pillaging their Clients. And were all the Fees of the several Practicers much impair'd, Justice might be obtain'd upon moderate Terms,
and

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and Persons of all Degrees and Conditions might have no Reason to chuse to sit down with the Sufferance of Injuries without Reprizal, for fear of being ruin'd, or at least greater Sufferers, by the extravagant Expences that attend the attaining of Right. An effectual and speedy Regulation in this behalf, is absolutely necessary for the good of the Kingdom in General: But whether what is here offer'd may be esteem'd to answer that end, must be submitted; which shall conclude this Twenty-ninth Section.



SECT.



S E C T. XXX.

From not enumerating the Particulars, and ascertaining the Expences, that every Suitor shall not exceed in passing thorough, and obtaining a final Judgment and Execution in each Court of Judicature in the Kingdom.

IT is propos'd, that the several Steps of Proceeding towards obtaining a Determination of Justice in each Court of Judicature in the Kingdom shall be specify'd, and the Fees both of Counsel and Agents imploy'd in the same, made much more moderate than those now in use, and there ascertain'd; by which Persons engag'd in troublesome Controversies relating
to

to the Recovery of Property might, before they entred upon such Disputes, have some Knowledge in what Time the same wou'd be determined, and a Certainty of the Expences that wou'd attend the same; in both which Particulars they have hitherto been so entirely defective in, that it has too often happen'd, that those engag'd in Law-Suits, unless long-liv'd, have never been able to see an End of the Contention, with Regard to the delays hitherto attending them, nor unless their Purfes were of an uncommon Depth, cou'd ever defray the excessive Charges that are constantly requir'd in passing thorough the many difficult, and almost endless, Labyrinths in the Pursuit of Right. And as this Treatise now is at the Point of being closed, it may not be amiss to sum up, in a concise Manner, the chief Drift and Scope of the whole, and to shew in what Order and Symmetry, and with what Ease and Convenience to the Subject, the several

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Courses of Law Proceedings wou'd appear to be in, if allow'd to be rebuilt upon the reasonable Foundation here laid down. For tho' the Grievances of our Law both in Fundamental and Practice are almost innumerable, and may be justly esteem'd beyond the Ability of one Head to comprehend or regulate, yet the most considerable Branches here treated of, and which may be properly brought under this last Section, may be reduc'd in a great Measure, within these following Particulars viz.

I. *Officers employ'd in the Courts of Law and Equity to have Yearly Sallaries from the Crown, and to dispatch the Business of the Subject gratis.*

2. *To suppress the many infamous inferior Courts of the Kingdom, and to have all Controversies*

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troverfies relating to Property, under fuch a fmall Value as herein defcrib'd, determin'd in a fummery Way, at the Quarter-Seffions of each County.

3. To have Appeals from thence directly to the King's Bench.

4. To have all other Ifsues, of what kind foever, try'd at the refpective Affizes of each County.

5. To have Appeals from thence directly to the Houfe of Peers, the final Refort of Juftice.

Now

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Now, that I have describ'd the several Courts in which alone Property is propos'd to be determin'd, and Justice administer'd, and have endeavour'd to reduce all the superfluous Offices, and vexatious and delatory Proceedings that have hitherto rendered Disputes in Law so dreadful in Consequence to those engag'd in them, that this Treatise may prove to be, as it is really intended, an impartial Scheme, to promote the Liberty and Repose of the *British* Subjects in general, I shall proceed to answer the Title of this Section, and set down the several Steps that are necessary to be made in the several Courts here propos'd to be pass'd thorough for the Administration of Justice, and shall leave it to the Consideration of that August Power, who is only capable of giving Life and Force to this Work if approved, and effecting a Reformation, to ascertain the Fees that the Suitors in such Courts shall be oblig'd to pay in each Court, from their first
 entering

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entring into the same till a final Judgment is obtain'd : I shall, therefore, proceed in enumerating, as I conceive, the several necessary Items, by which Justice may be as effectually administer'd, as by this round about and prolix Method, that the Course of Law Proceedings have hitherto been suffered to take, extreamly detrimental to all that is dear and valuable to the Subject, and no Way laudible in so excellent a Constitution as ours may justly esteem'd to be, for suffering such Abuses and Grievances to remain in Force so long.

In the Quarter-Sessions.

The establish'd Fees for the Plaintiff, viz.

To the Justice of the Peace,
for granting the Sum-
mons against the De-
fendant.

To

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To the Officer appointed to }
serve the said Summons,

To each Counsel, not }
exceeding two, for }
pleading the Cause,

To the Attorney, for ma- }
naging the same, and }
attending the Court,

To the Clerk of the Peace }
for drawing up the Or- }
der, after Judgment }
given,

To the Sheriff for execu- }
ting the same,

The Defendant's Fees.

To each Counsel, not ex- }
ceeding two, for de- }
fending the Cause,

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To the Attorney, for ma-
naging the Cause, and
attending the Court, }

To the Clerk of the Peace,
for drawing up the
Order, if given in
favour of the Defen-
dant, }

To the Sheriff, for Exe-
cuting the same, if
given for the Defen-
dant, }

In the King's Bench.

The Plaintiff's Fees.

For lodging the Record of
the Judgment given in
the Quarter-Sessions, }

To one Counsel, for plead-
ing then, }

Q

To

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To the Attorney's Fee

*For drawing the final
Rule, for affirming or
reversing the Judg-
ment,*

*To the Sheriff, for exe-
cuting the Judicial
Writ,*

The Defendant's Fees.

*To one Counsel, for de-
fending the Appeal,*

To the Attorney's Fee.

*For drawing the final
Rule, if given for
the Defendant,*

*To the Sheriff for execu-
ting the Writ,*

Issues

Issues at the Assizes.

The Plaintiff's Fees.

*To the Attorney, for draw-
ing the original Writ,
and making up the Re-
cord for Tryal,*

*For serving the same on
the Defendant,*

*To Counsel, not exceeding
two, for pleading the
Cause,*

*To the Attorney, for the
Assize-Fee,*

*To the Attorney, for mak-
ing the Judicial Writ,*

*To the Sheriff, for exe-
cuting the same,*

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The Defendant's Fees.

To Counsel, not exceeding two, for defending the Cause, }

To the Attorney, for the Assize-Fee, }

To the Attorney for making the Judicial Writ, if given in Favour of the Defendant, }

To the Sheriff, for executing the same, }

In the House of PEERS.

The Appellant's Fees.

To Counsel, for drawing the Petition of Appeal, }

To

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*To the Clerk of the Parlia-
ment, for lodging the
same in that noble House,*

*To Counsel, not exceeding
two, for pleading the
Cause,*

*To the Clerk of the Parlia-
ment, for making the
Order of the House,*

*To the Attorney, for his
Fee,*

The Respondent's Fees.

*To the Counsel, for draw-
ing the Answer of the
Respondent.*

*To the Clerk of the Par-
liament, for lodging
the same,*

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To Counsel, not exceed-
ing two, for defend-
ing the Appeal. }

To the Clerk of the Par-
liament, for making the
Order of the House, if
given in Favour of the
Respondent, }

To the Attorney, for his
Fee, }

I don't pretend, by the abovesaid
Calculation, every Item of Expences
that may be necessary in passing tho-
rough the different Channels hereby
propos'd for the Determination of
Property, but have only laid down
a Sketch or Specimen to introduce and
give a Light into my Intentions, which
will appear to be not only to have the
many tedious and superfluous Me-
thods

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thods now us'd, retrench'd, and a nearer Course steer'd to arrive at the desir'd Haven of Justice, but also a Price establish'd, (and not to be exceeded upon the most strict Penalties,) for which the same may be obtain'd. And if the Legislature cou'd be inspir'd with such good Resolutions for the Interest of their Country to make such a Regulation, that might in so eminent a Degree tend to the universal Good of that Community over which they prelide, by inforcing with a supreme Law, that the *British* Subjects might be assur'd of having Right administer'd to them in such a Court at such a limited Expence, then, if needful, to a Judicature still a Class higher, and after all, to the Dernier Resort, all under the same Restrictions, the Streams of Justice might then be said to issue forth not only pure and uncorrupt, but to descend with a gentle and easy Torrent. Let every one that peruses this Treatise lay his

Hand upon his Heart, and impartially and sincerely consider (not as a Practiser will do, but as a Patriot must do) whether the present Institution, or this propos'd Innovation, wou'd contribute more to publick Good. If this Expedient was comply'd with, the Maxim, hitherto prov'd true in Law-Dispute, of finding the Remedy worse than the Disease, cou'd no longer subsist, but that the Subject, upon Injuries sustain'd, might with Alacrity approach the Tribunal of Justice for Redress, and be under no Apprehension that the Effects of the Law shou'd prove abortive, and the Rewards thereby allotted consum'd in the necessary Means us'd to obtain it. Such a happy Innovation as this is, wou'd not only procure Ease and Tranquillity to the Subject in general, but Satisfaction and inward Pleasure to the Author that shou'd first project it, wou'd redound to the Honour and lasting Memory to those in Power that shou'd strenuously

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ously promote it, and, above all, Lustre and Glory to that Legislature and Government that wou'd compleat it. Our Constitution, tho' excellent in the whole Structure, yet is capable of Improvement in several Branches, and in none more so, than in that which is the Subject-matter of this Treatise: The Out-cries of the People are not only loud, but unanimous about the great Delays and Abuses they meet with in their Pursuit after Justice; and surely, so material a Defect as this is, shou'd not be suffer'd to remain in a Constitution, that, above all others in the known World, has the Preference for being, in its first Structure, calculated for the Support and Dignity of human Nature.

If the Historians who have treated of the Laws and Constitution of *Denmark*, (a *Protestant*, almost in the same Longitude with our own,) be genuine in their Relation, the Manner of distributing Justice there corresponds,
in

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in some Measure, with that which is here recommended, of appropriating all Civil and Criminal Cases, arising within certain Bounds and Precincts, to convenient Judicatures, and from thence by Appeal to others more high, 'till they shall arrive at the last Resort; in all which, not only the Time, in passing through the several Courts, are limited, but the Expences that the Suitors shall be at in obtaining their Judgments, respectively, are strictly ascertain'd; and doubtless, the Subjects of that Kingdom, as ours would here, have sufficiently felt the happy Effects of such an excellent Institution. And if a Constitution, the Sovereign of which is arbitrary, and who governs with despotick Sway, has provided so amply for the Ease and Liberty of the Subject, much more should it be incumbent on us, to redress all such Grievances, as are here complain'd of; that no Speck or Blemish should appear in this Free Kingdom, where the Laws
are

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are made by the Subjects themselves, and where Monarchy is limited within just and necessary Barriers. The Arguments that may be made use of, to enforce the Reasonableness of this propos'd Amendment are infinite; so I shall add no more, than my Wishes, that not only this, but every other Branch in this Essay, that may be thought reasonable, and for the Good of the Country, (the Prosperity of which this Author has not a little at Heart,) may meet with the desired Success; which shall conclude this Thirtieth and Last Section.

Having now, my Lord, gone thorough each Branch a-part that composes this Treatise, I must not only submit the Reasonableness of it to the World in general, but to those learned in the Profession in particular, (of which Body your Lordship has the Preference,) who are the best able to judge of its Defects, and of the Expedients

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Expedients proper to be applied as Remedies thereto. And, tho' the Perusal of this Essay may interfere somewhat with your Lordship's Time, which may be justly esteem'd to be laboriously imploy'd, considering the high and weighty Office you now bear in the State ; yet, if what I have written happens to meet with Approbation, I conceive there can be no Occasion for any Excuse for thus addressing myself to you, (and I flatter myself with the Hopes, that you'll be of the same Sentiments,) considering the great Consequence and Import of the Subject. For he who can be the first Projector of Publick Service, has far from any Reason either to conceal his Name, or from making any Apology for any Assistance he shall ask in promoting such a Design ; for it is a Duty incumbent upon every Subject to lend an helping Hand to advance the Good of the Community of which he is a Member. But there is no Occasion

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sion to use any Arguments with your Lordship, to induce you to enter into any zealous Measures for the Good of your Country, since 'tis most notorious that your Life and Actions have always been agreeable to this excellent Doctrine; and that you have spared no Pains in the eminent Posts in which your Royal Master has intrusted you, to execute them not only with Honour to yourself, but to the Satisfaction and general Applause of those who were Suitors for Justice. And, surely, these are most noble Principles, and worthy Imitation: And tho', now-a-days, not so much in Fashion as good Men would wish, or were practis'd among the antient *Romans*, yet their intrinsic Value still bears the same Impression, or, at least, with great Justice should do: For how much soever the exorbitant Desire of accumulating Wealth and Honours may possess the Frailty of human Minds, yet the Reflection
of

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of being a faithful Servant to an indulgent Prince, a speedy and impartial Dispenser of Justice amongst his Subjects from the Tribunal where he is placed, a strenuous Supporter of the Constitution in every Branch that appears for the Good and Ease of Mankind, and a no less ready Redresser of what may appear defective with a zealous Heart and publick Spirit, and a Disdain and Abhorrence of all Self-Views that may interfere in so noble a Progress: I say, these Considerations will blossom, when all the other superficial Trophies are vanished into Smoak.

That your Royal Master may long have in his Councils a Minister so universally esteemed as yourself; and that you may continue to exert your Abilities for the general Good of your Country; and that this Essay may be esteem'd an Offering worthy of your Approbation, (which has required my unwearied Industry
for

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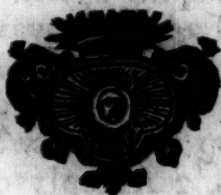
for its Compofure,) are the ardent
Wifhes of,

My LORD,

Your most Obedient

Humble Servant.

F I N I S.



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